JAN 30 1956
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 654

EDITH NEUMAN DE VEGVAR,

Petitioner,

against

WHITNEY GILLILLAND, PEARL CARTER PACE and HENRY J. CLAY, constituting the Foreign Claims Settlement Commission of the United States, and GEORGE M. HUMPHREY as Secretary of the Treasury of the United States of America,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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TABLE OF CONTENTS

	PAGE
PETITION FOR WRIT OF CERTIORARI	1
Opinion	2
Jurisdiction	2
Question Presented	2
Statement	3
Reasons for Granting the Writ	10
I	10
II	12
III	15
CONCLUSION	18
APPENDIX A—Opinion Below	19
APPENDIX B—Judgment Below	25

DECISIONS AND AUTHORITIES

Bridges v. Wixon, 326 U. S. 135, 156	14
Elgin, J. & E. R. Co. v. Burley, 325 U. S. 711, 749	14
Estep v. United States, 327 U. S. 114	14
Kenneth Culp Davis "Unreviewable Administrative Action," 15 Federal Rules Decisions 411	17
Stark v. Wickard, 321 U. S. 288	16, 17
United States v. Williams, 278 U. S. 255	13
Wilson & Co. v. United States, 311 U. S. 104	12

STATUTES, ETC.

PAGE

Adjusted Compensation Act, c. 157, 43 Stat. 121 and Act of 1926, c. 751, 44 Stat. 826, Sec. 310 13

Act of Aug. 9, 1955, 69 Stat. 562 11

Agricultural Adjustment Act of 1933, 48 Stat. 199, 7 USCA Sec. 641(e) 12

Agricultural Marketing Agreement Act of 1937, 50 Stat. 246, 7 USCA Sec. 601 16

Immigration Act of 1917, 8 USCA Sec. 155(a) 14

International Claims Settlement Act of 1949, 64 Stat. 13, 22 USCA Sec. 1621 et seq. 3, 7, 10, 11

Judiciary Act, 28 USC Sec. 1254(1), 1331 2

Railway Labor Act of 1934, 48 Stat. 1185, 45 USC Sec. 151 14

Selective Service and Training Act of 1940, 54 Stat. 894, 50 USC App. Sec. 311 14

Yugoslav Claims Agreement of 1948, 62 Stat. 2658 6

Yugoslav Nationalization of Private Enterprises Act of 1946, Official Gazette of December 6, 1946 6

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia entered in the above-entitled case on December 22, 1955.

Opinion Below

No opinion was filed in the District Court. The opinion of the Court of Appeals (R. 51) is not yet officially reported; it is also printed as an appendix to this petition.

Jurisdiction

The judgment of the Court of Appeals was entered on December 22, 1955 (R. 57). The jurisdiction of this Court is invoked under 28 USC Sec. 1254(1). The District Court had jurisdiction of the action under 28 USC Sec. 1331.

Question Presented

Does the District Court have jurisdiction, upon the complaint of the petitioner and the motion of the respondents to dismiss, to determine whether (1) the Foreign Claims Settlement Commission of the United States violated the Act of Congress which created that Commission by failing, as alleged in the complaint, to follow and apply to the claim of petitioner the statutory standards prescribed and (2) thereby failed to exercise the jurisdiction assigned to it? In other words, because the decisions of the Commission are made "final and conclusive on all questions of law and fact and not subject to review * * * by any court," is the Commission thereby invested with sole power to decide whether or not it will perform the duties directed and alone determine the scope and exercise of its own jurisdiction, without judicial intervention upon the issue of violation of rights?

The first ground of the respondents' motion to dismiss was that the District Court lacked jurisdiction of the subject matter. The District Court, without opinion, entered an order dismissing the complaint on the ground that the Court "is without jurisdiction of the subject matter of this action." The Court of Appeals entered an order affirming the above order of the District Court.

Statement

This is an action against the members of the Foreign Claims Settlement Commission of the United States (hereinafter referred to as the "Commission") and the Secretary of the Treasury of the United States seeking:

(1) a judgment declaring the Final Decision of the Commission (Decision No. 1460) entered in Claim No. Y-1275 (hereinafter referred to as the "petitioner's claim") filed with the Commission by the petitioner, to be arbitrary, contrary to law, and null and void in its denial of petitioner's claim;

(2) a mandatory injunction requiring the members of the Commission to declare the said Final Decision to be ineffective;

(3) a mandatory injunction requiring the members of the Commission to determine the claim in accordance with the provisions of the International Claims Settlement Act of 1949, as amended (22 USCA Sec. 1621, et seq.) (R. 20), hereinafter referred to as "the Act," i.e., on the basis of the evidence and written legal contentions presented to the Commission, and upon the results of the independent investigation of the claim made by the Commission; and

(4) an injunction restraining the Secretary of the Treasury until valid determination of the petitioner's claim, from making payments out of the Yugoslav Claims Fund which would reduce the total amount in such Fund to a sum less than $5,883,848.04, the amount of petitioner's claim to compensation from the Fund.

The respondents moved the United States District Court for the District of Columbia to dismiss the complaint herein on the grounds that the Final Decision of the Commission is final and not subject to review by the Court; that the Court is without jurisdiction to issue an injunction against the Secretary of the Treasury, and that the Commission is without jurisdiction to perform the acts sought to be compelled by petitioner (R. 13). By Order of June 13, 1955 the District Court granted the respondents' motion and dismissed the complaint on the ground that the Court "* * * is without jurisdiction of the subject matter of this action" (R. 14).

In order to prevent the Secretary of the Treasury from depleting and exhausting all monies remaining in the Yugoslav Claims Fund by payment to other but successful claimants before the Commission and thereby rendering petitioner's action moot, petitioner applied to the Court of Appeals in July, 1955 for a temporary stay against such further payments from this Fund pending final disposition of this action. By Order dated July 20, 1955 the Court of Appeals granted that application for temporary stay (R. 16).

The appeal from the District Court order dismissing the complaint was argued on October 17, 1955 before Judges

Wilbur K. Miller, Washington and Bastian. On November 7th the Court notified counsel that Judge Bastian had withdrawn from participation in the pending decision and that the case was set for reargument on November 21st. On November 18th counsel was orally notified by the clerk that the Court, which would include another judge in replacement for Judge Bastian, preferred not to hear oral argument. Counsel so stipulating, the case was then resubmitted upon the briefs alone and the transcript, if any, of the oral arguments of October 17th. The opinion of the Court of Appeals was filed on December 22nd. It then appeared that Chief Judge Edgerton had replaced Judge Bastian.

Of the three appellate judges constituting the Court in the rendering of the decision, Judge Miller alone had heard both oral arguments of July 19th and October 17th; Judge Washington heard the oral argument of October 17th; Chief Judge Edgerton heard neither argument.

The Court of Appeals by its decision of December 22nd, with opinion by Judge Washington, affirmed the judgment of the District Court dismissing the complaint. Judge Miller dissented without opinion. The opinion of the majority of the Court is discussed later in this petition.

Petitioner thereupon applied on December 29th to the Court of Appeals for an order extending the stay order of July 22nd against the respondent Secretary of the Treasury. The Court extended the stay order by order dated January 20, 1956 until February 1, 1956.

The petitioner is a citizen of the United States, by naturalization acquired on August 9, 1946. She is the owner

of 35,742 shares of the 200,000 shares of outstanding capital stock of S. H. Gutmann, A. G., a Yugoslav corporation (hereinafter referred to as the "Corporation"). The assets and franchises of the Corporation were nationalized by the Government of Yugoslavia on December 5, 1946 pursuant to the Nationalization of Private Enterprises Act of December 5, 1946* (Official Gazette No. 98 of December 6, 1946).

Pursuant to the provisions of the Act of Congress of 1949 petitioner duly filed with the Commission on or about June 28, 1951 a claim requesting compensation in the amount of $5,883,848.04 as the value of her said shares in the Corporation whose property and franchises had thus been taken by such nationalization without any payment made by Yugoslavia or otherwise. This claim was within the terms of the Yugoslav Claims Agreement between the Governments of the United States of America and of the Federal People's Republic of Yugoslavia providing for payment of pecuniary claims of the United States and its nationals signed July 19, 1948 (62 Stat. 2658, Article 2(B)) (R. 34).

Pursuant to that Agreement Yugoslavia paid to the United States and there was deposited in the United States Treasury the sum of $17,000,000 (Art. 1(a)) (R. 33), thereafter known as the "Yugoslav Claims Fund." All claims of United States nationals against Yugoslavia to compensation for the loss of their property by "nationalization or other taking" (Agreement, Art. 1(a), 4 (b)) (R. 33, 35) are to be asserted against and paid by the Treasury from

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* The Commission took judicial notice of this Act.

that Fund upon determination of these claims and the certification of awards thereon made by the Commission.

The Commission accordingly had jurisdiction to receive, examine, adjudicate and render a final decision with respect to petitioner's claim (22 USCA Sec. 1623(a)). In support of her claim, petitioner filed with the Commission numerous documents, sworn statements and other evidence establishing *inter alia* the ownership by the Corporation of the property and franchises nationalized, the nationalization of such property and franchises pursuant to the Yugoslav Nationalization Act of December 5, 1946 and the ownership by the petitioner of the aforesaid shares of stock of the Corporation.

On or about November 4, 1954 the Commission issued a Proposed Decision No. 1460 under which the petitioner's claim was proposed to be denied by the Commission upon two grounds, (1) that petitioner had not sustained the burden of proving her ownership of the 35,742 shares of the stock of the Corporation and (2) that the property of the Corporation had been confiscated by a decree of a court of Yugoslavia rendered prior to the date upon which the petitioner became a national of the United States. Thereafter, pursuant to the rules and regulations of the Commission, the petitioner filed with the Commission objections to the Proposed Decision, an assignment of errors and a request for a hearing upon the claim for the purpose of taking evidence and hearing argument upon the errors assigned.

Hearings were held on December 9, 10 and 13, 1954 before Honorable Henry J. Clay, one of the three respondent members of the Commission. At the hearings the

petitioner offered proof, by sworn testimony of a witness expert in Yugoslav law and documentary evidence, to establish that the purported decree of confiscation of the Corporation's property (which had been entered by the Yugoslav court in a criminal prosecution against named individual persons) was completely null and void and of no effect whatever under the applicable laws of Yugoslavia, was in violation of the constitution and laws of Yugoslavia, and did not have the effect in Yugoslavia itself of confiscating, nationalizing or otherwise effecting a transfer of the property of the Corporation to the Government of Yugoslavia. The Commission, however, refused to receive and admit such evidence and excluded this evidence as irrelevant, immaterial and incompetent. Petitioner also offered elaborate proof of her ownership of shares of the Corporation's capital stock.

During the hearing the petitioner also offered proof, by sworn testimony of witnesses orally heard and by documentary evidence, all of which was received by the Commission, which established that even if the aforesaid confiscation decree of the Yugoslav court were valid, it did not have the effect (under Yugoslav law) of confiscating, nationalizing or otherwise vesting title to the property of the Corporation in the Government of Yugoslavia; that further proceedings in another court were required to be taken and completed before title to the property of the Corporation would pass to the Government of Yugoslavia; and that such proceedings were not had or taken until the year 1947, a date subsequent to that upon which the petitioner had become a national of the United States. At the hearings no evidence contrary to that submitted by the

petitioner was offered or received and so far as petitioner has been advised or knows, no evidence of any kind was ever submitted to the Commission at any other time which contradicts this evidence.

Thereafter, on December 30, 1954 the Commission rendered its "Final Decision" (R. 41) by which the petitioner's claim was denied solely on the ground that the property of the Corporation had been taken by the Government of Yugoslavia on January 19, 1946 (a date prior to petitioner's United States naturalization)* by virtue of the purported affirmance on appeal by a Yugoslav court of the aforesaid decree of confiscation of such property. Commissioner Henry J. Clay, who alone conducted the hearings, filed a dissenting opinion (R. 46). The Commission in its Final Decision did not make any other determination or finding or raise any other issue by virtue of which the petitioner's claim might be denied, but denied the claim solely on the grounds stated above.

Petitioner's complaint charged in detail (paragraph FOURTEENTH) (R. 10) that the actions of the Commission (a) in refusing to accept the evidence offered by the petitioner to establish the invalidity and nullity of the confiscation decree of the Yugoslav Court relied upon by the Commission and (b) in finding, contrary to the uncontroverted evidence, that the said decree had the effect of transferring the property of the Corporation to the Yugoslav Government in January, 1946, were arbitrary and capricious acts by the Commission, were in violation of the provisions of the Act of 1949 and were in excess

* Petitioner was never a national of Yugoslavia.

of the authority conferred upon the Commission under that Act. Furthermore, it appears on the face of the Final Decision that the Commission in rejecting the claim of the petitioner based its decision on principles of internal municipal law of the United States and not upon international law, justice and equity as required by Sec. 4(a) of the Act of 1949 (22 USCA Sec. 1623(a)) (R. 22-23). Accordingly, the determination of the claim was in violation of the express provisions of the law from which the Commission derives its authority and is therefore wholly null and void and, as Commissioner Clay concluded in his dissenting opinion, the claim has not been settled as required by the Act.

Reasons for Granting the Writ

I

The decision of the Court of Appeals of December 22, 1955 is the first interpretation by any higher Federal Court of the International Claims Settlement Act of 1949 of which we are aware. This decision is upon an important question of Federal law which has not been but should be decided by this Court. There are at least four other cases now pending in the District Court for the District of Columbia for similar relief, sought by other plaintiffs against the Commission and based upon its failure to follow the statutory mandate in its Final Decisions adverse to them upon similar claims for compensation from the Yugoslav Claims Fund.

The Commission is still in existence and in full operation. It is also now charged with the duty to determine an

unknown number of other claims against other funds on deposit in the Treasury, aggregating many millions of dollars. Such future determinations of other classes of claims are to be made by the same Commission under the same prescriptions of procedure and standards specified in the original creating Act of 1949 which are put squarely in issue by petitioner's complaint and the decision below.

These continuing duties devolve upon the Commission under other Acts of Congress enacted subsequent to 1949. Of these, a single example will suffice, viz., the Act of August 9, 1955, (69 Stat. 562), which vested in the United States over $20,000,000 of "satellite" countries' funds here and devolves upon the Commission the duty to receive and determine claims of United States citizens for debts owed to them and loss suffered by nationalization, etc. of their property in those countries.

It is, therefore, of great importance to a probably large number of present and future claimants under these recent Acts of Congress which extend the duties of the Commission, in addition to the other plaintiffs in the cases pending with respect to denial of awards from the Yugoslav Claims Fund, that final authoritative interpretation be given by this Court to the "preclusion" or review provision of Sec. 4(h) of the Act of 1949 (22 USCA Sec. 1623 (h)) (R. 26).

The Court of Appeals decision of December 22, 1955, appended hereto, omitted any analysis and discussion of the respective contentions of petitioner and respondents in that Court and the dissenting judge filed no opinion. The opinion of the majority of the Court is no more than a statement of the case and the facts, a summary of the principal contentions and the conclusion that "plaintiff is barred

by the statutory prohibitions," without any citation of precedent or other authority. The concluding sentence of the majority opinion provides for a stay of the mandate for ten days "to permit appellant to take such further steps as she may be advised." It was the evident expectation of that Court that the petitioner-appellant would seek to bring her decision to this Court for final determination.

II

The Court of Appeals decision is in probable conflict with decisions of this Court. Conceding that the conventional statutory words in question "do not bar certain types of judicial action" (Op. p. 4), the court illustrated this by reference to a hypothetical situation, not here present, of denial of consideration by reason of race, creed or color. Beyond that, the opinion indicates no other area of permissible judicial intervention and flatly denies any review of the issue presented by the pleadings.

This Court has granted or itself made review of administrative decisions, even under statutes of varying terms of restriction, upon issues other than due process. *Wilson & Co. Inc.* v. *U. S.*, 311 U. S. 104 (1940), was a claim for a refund of taxes paid under the Agricultural Adjustment Act, which had been held to be unconstitutional. The claim for refund was denied by the Commissioner of Internal Revenue. An action was brought in the Court of Claims; this was dismissed on the ground that judicial review was precluded by the following statute:

> "The determination of the Commissioner of Internal Revenue with respect to any refund under this sec-

> tion shall be final and no court shall have jurisdiction to review such determination" 7 USCA Sec. 641(e).

On appeal the Supreme Court affirmed the dismissal of the action below, but stated:

> "Petitioners contend that Congress intended to commit to the final determination of the Commissioner only 'such matters as findings of fact, computations and the like' * * * [W]e fail to see how the argument can aid petitioners here because the record does not show why their claims were denied. Since the record is silent on this point, such decisions as * * * Silberschein v. U. S. * * * are plainly distinguishable" (p. 106).

The implication is clear that the Court does not regard such a statute as preclusive of judicial review of an "arbitrary or capricious" act, and that if the record had disclosed the grounds on which the claim had been denied by the Commissioner, review of the issue of the jurisdiction of the Commissioner in so doing would have been exercised.

We urge that the addition of the legislative prohibition against "review by any court," in whatever precise words, adds nothing to "final and binding" or any other equivalent words found in other Federal statutes.

United States v. *Williams,* 278 U. S. 255 (1926) was an action to recover upon an adjusted service certificate issued through the Veterans Bureau to respondent's husband under the Adjusted Compensation Act, c. 157, 43 Stat. 121, as amended by the Act of 1926, c. 751, 44 Stat. 826. Sec. 310 of the amending act made the decisions "final and conclusive."

A demurrer to the petition was sustained by the District Court which was reversed on appeal. This Court reversed the Circuit Court of Appeals on the ground that the record did not disclose the basis for the action of the Director of the Bureau:

> "* * * whatever it may have been, his decision is final, at least unless it be wholly without evidential support or wholly dependent upon a question of law or clearly arbitrary or capricious" (p. 257).

See also *Elgin, J. & E. R. Co.* v. *Burley,* 325 U. S. 711, 749 (1944) where the Court, upon the issues there framed under the Railway Labor Act of 1934, 48 Stat. 1185, 45 USC Sec. 151 ff., declined to pass "on the important issue concerning the finality and conclusive effect of the award, or to determine the validity and legal effect of the compromise agreement."

Bridges v. *Wixon,* 326 U. S. 135, 156 (1945): petition for writ of habeas corpus to review a "final" order of deportation by the Attorney General under the Immigration Act of 1917, 8 USCA Sec. 155(a). The Court reversed the deportation order for want of a fair hearing.

Estep v. *United States,* 327 U. S. 114 (1946): petitioner was convicted of violation of the Selective Training and Service Act of 1940, 54 Stat. 894, 50 USC App. Sec. 311, which made the orders of the local Boards "final" if "within their respective jurisdictions." This Court in reversing the conviction for refusal of the District Court to receive evidence that the petitioner was entitled to exempt status, held that a citizen should not go to jail "for not obeying an unlawful order of an administrative agency" (p. 122).

III

A third reason for granting the writ is the state of doubt, approaching confusion, in the law as to the limits and the positive area of judicial intervention in actions brought under the restrictions of this type of Federal statute. We suggest, with respect, the present need for re-examination of the basic principles.

We do not gainsay the existence of a limited area of non-reviewability in which administrative discretion is paramount. Bounties and "gratuities" in their present multitudinous forms are appropriate to this pocket, particularly where the type of claim is by its inherent nature one peculiarly fitted for administrative expertise in determination and wherein questions of law in the strict sense are largely absent or subordinate.

Petitioner's claim, however, is not of this class; it is, on the contrary, a claim to compensation as of right—even if the right is statutory in origin—for loss of property taken by the (foreign) sovereign which has now furnished the compensatory fund.

Moreover, the standards prescribed for the determination of loss, of the manner and legal effect of "taking" by Yugoslavia, and of the nature of the property rights asserted by claimants—all these are in varying degrees matters of foreign and international law beyond the usual run of questions involved in ordinary administrative deliberations on local matters. "International law, justice and equity" standards, applicable to acts and property rights abroad, are inherently matters for courts of law rather than for conclusive determination by a body in whose se-

lection the creating Act prescribes no standards of training and experience in the law.

This Act of Congress, it should be noted, provides for no appeal to any administrative chamber of the Commission or review by any other body. There was no possible opportunity for petitioner, after the Commission's Final Decision of Friday, December 30, 1954, to move for reconsideration or rehearing. Thus within the administrative framework there is no channel for re-examination and correction of errors of law, of violation of deliberately specified statutory procedures, and of total disregard of standards of law specifically prescribed. If all judicial intervention be denied, then these standards of law and procedure are no more than the expression by the Congress of a hope that the agency may, *but need not,* obey the mandate.

The statute created or recognized certain rights in this class of citizen-claimants. But without judicial protection, these rights are suspended in the vacuum of total absence of the rule of law. The instant case is therefore the appropriate and urgently needed focus for plotting with greater clarity than is now known to the bar the line between limited review and no review at all.

A pertinent illustration of the present doubt is afforded by the following. In *Stark* v. *Wickard,* 321 U. S. 288 (1944), a decision under the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246, 7 USCA Sec. 601 et seq.)—a statute which contained *no* finality and preclusion of judicial review provisions—this Court in holding that the petitioners "had shown a right to judicial examination of

their complaint" against an order by the Secretary of Agriculture directing a money charge against petitioners from producers' sale price funds, made extensive observations sustaining the power of courts "to participate in law enforcement entrusted to administrative bodies only to the extent necessary to protect justiciable individual rights against administrative action fairly beyond the granted powers. The responsibility of determining the limits of statutory grants of authority in such instances is a judicial function entrusted to the courts by Congress by the statutes establishing courts and marking their jurisdiction" (321 U. S. pp. 309-310; cf. also pp. 307-308).

Is the concept just cited applicable only in the absence of restrictive provisions in the statute, or is it applicable in broader generality, at least where there is no review possible within the administrative organism? 15 *Federal Rules Decisions,* 411-452 (1954) contains a searching analysis by Kenneth Culp Davis entitled "Unreviewable Administrative Action" to which we respectfully invite the attention of the Court, particularly to his comment at p. 448 on the absence "of [declared] principle concerning the constitutional minimum of review."

The literal application of the statutory restriction, to exclude any judicial examination of a plain issue of violation of statutory rights and redress of that wrong, then projects the debate into the constitutional realm of the inherent function of the courts in our organic system of government. Cf. *Stark* v. *Wickard, supra,* p. 16. If the Congress creates an agency and delegates to it the power to perform what the Congress itself might do—carve up and directly distribute a dollar deposit in the Treasury—

is that agency beyond any reach of the judicial arm to protect rights which the statute has created? Is the delegation of such unusual powers as is here made wholly beyond judicial scrutiny?

We are aware that resolution of constitutional issues will be avoided wherever possible but we submit that the Court of Appeals rejection of petitioner's right of suit presents this Court with the alternative between finding error in that conclusion of the opinion below or entering upon the larger and more delicate area.

CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be granted.

Respectfully submitted,

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JAMES E. HUGHES
GEORGE F. MASON, JR.
Counsel for Petitioner

January 27, 1956.

APPENDIX A

Opinion Below

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12791

EDITH NEUMAN DE VEGVAR, APPELLANT,

v.

WHITNEY GILLILLAND, PEARL CARTER PACE, AND HENRY J. CLAY, CONSTITUTING THE FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES, AND GEORGE M. HUMPHREY AS SECRETARY OF THE TREASURY OF THE UNITED STATES OF AMERICA, APPELLEES.

Appeal from the United States District Court
for the District of Columbia

Decided December 22, 1955

Mr. Ernest Angell, of the bar of the Court of Appeals of New York, *pro hac vice,* by special leave of Court, with whom *Mr. Percy A. Shay* was on the brief, for appellant.

Mr. Samuel D. Slade, Attorney, Department of Justice, with whom *Mr. Leo A. Rover,* United States Attorney, was on the brief, for appellee. *Messrs. Edward H. Hickey* and *William P. Arnold,* Attorneys, Department of Justice, and *Lewis Carroll* and *Rufus E. Stetson,* Assistant United States Attorneys, also entered appearances for appellee.

Appendix A

Messrs. Philip Levy, Joseph W. Wyatt, Robert T. Reynolds and *Samuel A. McCain,* filed a brief on behalf of Victor K. Anninger; Steven Ausnit; Walter Petschek; Socony Mobil Oil Company, Inc.; Karel Charles Stiassni; and Francis Price, Jr. and Dennis G. Karzag, Executors of the Estate of William Zimdin, as *amici curiae,* urging affirmance.

Before EDGERTON, Chief Judge, and WILBUR K. MILLER and WASHINGTON, Circuit Judges.

WASHINGTON, *Circuit Judge*: Mrs. de Vegvar brought suit in the District Court against the members of the Foreign Claims Settlement Commission, seeking to compel reconsideration of a decision of the Commission denying her claim to a share in the fund administered by that body known as the Yugoslav Claims Fund. The Secretary of the Treasury was also made a party defendant, and plaintiff asked that he be restrained from paying the amounts awarded to other claimants by the Commission, as this would so reduce the fund that her claim could not be paid.

The Yugoslav Claims Fund consists of moneys paid by Yugoslavia to the United States pursuant to an executive agreement,[1] this payment to be in full settlement and discharge of certain claims of our government against Yugoslavia and of all claims "of nationals of the United States against the Government of Yugoslavia on account of the nationalization and other taking by Yugoslavia of property" between September 1, 1939, and the date of the agreement. The agreement provided that only persons who were nationals of the United States "at the time of nationalization or other taking" by Yugoslavia were to be eligible to share in the Fund. It also provided that claims against the Fund were to be adjudicated by an

[1] The Yugoslav Claims Agreement of 1948, 62 STAT. 2658, T.I.A.S. No. 1803.

agency to be established or designated by the United States Government, and that distribution was to be made "in accordance with such methods of distribution as may be adopted by the Government of the United States."

Congress passed the International Claims Settlement Act of 1949[2] to implement the executive agreement just described and any similar agreements which might later be negotiated. The Act set up the International Claims Commission[3] and gave it jurisdiction to make "final decisions in respect to claims" against the Fund. 22 U.S.C. § 1623(a). Such decisions were to "constitute a full and final disposition" of each claim considered. 22 U.S.C. § 1623(b). The Act then went on to say in Section 4 (h) that the "action of the Commission in allowing or denying any claim under this chapter shall be final and conclusive on all questions of law and fact and not subject to review by the Secretary of State or any other official, department, agency, or establishment of the United States or by any court by mandamus or otherwise." 22 U.S.C. § 1623 (h) (1952).

Mrs. de Vegvar, as one of those who filed a claim against the Fund, was given a hearing by the Commission. Most of the evidence she presented was admitted, but the Commission excluded certain proffered evidence relating to the laws of Yugoslavia. The Commission later rendered its Final Decision, holding that plaintiff's property had been taken by Yugoslavia on January 19, 1946, a date prior to the time when plaintiff became a naturalized citizen of the United States. One Commissioner dissented, on the ground that the Government of Yugo-

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[2] 64 STAT. 13, 22 U.S.C. §§ 1622-27 (1952).

[3] The functions and jurisdiction of that Commission were later transferred to the Foreign Claims Settlement Commission. Reorganization Plan No. 1 of 1954, effective July 1, 1954, 19 FED. REG. 3985.

slavia had not obtained title to the property, under the laws of Yugoslavia, until November, 1947, by which time plaintiff had become an American citizen. Mrs. de Vegvar then brought this action in the District Court. A motion to dismiss was made by the defendant-appellees, and was granted by the Court. This appeal followed.

Appellant's main reliance is on Section 4(a) of the Act, which directs the Commission to "apply the following in the following order: (1) The provisions of the applicable claims agreement as provided in this subsection; and (2) the applicable principles of international law, justice and equity." 22 U.S.C. § 1623(a) (1952). Appellant says that the Commission failed to examine and give effect to the Yugoslav statute relating to confiscation of property, and that this was a failure by the Commission to exercise the jurisdiction conferred on it by the Act. She further says that the refusal by the Commission to receive the evidence offered by her, to the effect that the decree of the Yugoslav court which purported to confiscate her property was null and void under the Constitution and laws of Yugoslavia, was a failure to apply the required standard of international law, and was an arbitrary act in excess of the jurisdiction of the Commission.

The Government's principal reliance is on the provisions of Section 4(h) of the Act, quoted above, precluding judicial review of the determinations of the Commission. The legislative history of that section shows that Congress intended this prohibition to be of broad scope and effect.[4] Congress knew that if each claimant could take his claim to the courts the Fund could not safely be distributed until every last litigation had been terminated. Considerations of both domestic and foreign policy called for

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[4] See Congressman Ribicoff's statements at 95 CONG. REC. 8840, 8854.

the prompt distribution of the Fund and the ending of disputes between Yugoslavia and the United States.

No doubt the provisions of Section 4(h) do not bar certain types of judicial action. The Government brief, speaking of these provisions, says: "There are no constitutional or other reasons for inferring any limitations thereon, and appellant has raised none." And further: "It is here assumed that, were this an area in which constitutional rights were or might be involved, Congress could not prevent the vindication of such rights in a judicial tribunal. Congress recognized, however, that no constitutional rights were involved in the distribution of the Yugoslav Claims Fund and that the nonreviewability provision could therefore be as broad as the situation required." We may assume for purposes of argument that the provisions of Section 4(h) would probably not prevent judicial relief in the situation—to illustrate—where a claimant is denied consideration by reason of his race, creed or color. No violation of constitutional right is suggested here: plaintiff-appellant makes no contention, for example, that the United States has taken her property without paying for it. What happened was that Yugoslavia took plaintiff's property; the United States undertook to obtain moneys from Yugoslavia from which certain sorts of claims of United States nationals could be satisfied; a Commission was established to deal finally with such matters; plaintiff made a claim and was determined not to be in the class entitled to participate. Errors in the result reached, or errors in the admission of evidence or in the making of a legal ruling—assuming such errors to have been made—are not grounds for judicial intervention in the face of the congressional fiat that the Commission's determinations shall be free of judicial review. Plaintiff is barred by the statutory prohibition.

The Government also urges that, apart from the statute, the courts should deny judicial review of the matters complained of. The creation and distribution of the Fund, it says, were within the realm of foreign affairs: the citizen obtained only such status for his claim as his government succeeded in obtaining for him and decided to give him. The Government urges that such settlements of international claims—absent clear congressional intent to the contrary—give rise to no right of judicial review, citing *Z. & F. Assets Corp.* v. *Hull,* 311 U.S. 470 (1941). We need not, for present purposes, pass on this contention.

For the reasons given, the judgment of the District Court dismissing the complaint will be affirmed. The injunctive order which this court entered pending the appeal will remain in force until our mandate is issued.[5] The mandate will be stayed for ten days to permit appellant to take such further steps as she may be advised.

So ordered.

WILBUR K. MILLER, Circuit Judge, dissents.

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[5] We restrained the Secretary of the Treasury, pending final disposition of this appeal or until further order of the court, from making payments out of the Yugoslav Claims Fund which would reduce the total amount in such Fund to a sum less than $5,885,848.04.

APPENDIX B

Judgment Below

United States Court of Appeals
For the
District of Columbia Circuit
FILED Dec 22 1955
s/ JOSEPH W. STEWART
Clerk

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

October Term, 1955

[SAME TITLE]

Appeal from the United States District Court
for the District of Columbia

Before:

EDGERTON, *Chief Judge,* and WILBUR K. MILLER and WASHINGTON, *Circuit Judges.*

This cause having been assigned on November 4, 1955, for reargument on November 21, 1955, and counsel for the parties having consented in writing under date of November 18, 1955, to the submission of the case to this division of the Court on the briefs, on the basis of the prior argument on October 17, 1955, before the division of this Court consisting of Circuit Judges Wilbur K. Miller, Washington, and Bastian, the case was accordingly treated by the Court as submitted on the briefs.

Appendix B

ON CONSIDERATION WHEREOF, It is ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause be, and the same is hereby, affirmed.

IT IS FURTHER ORDERED by the Court that a mandate shall issue in this case on January 3, 1956.

IT IS FURTHER ORDERED by the Court that the injunction of this Court entered July 20, 1955, enjoining, pending this appeal, payments out of the Yugoslav Claims Fund which would reduce the total amount in such fund to a sum less than $5,883,848.04 be, and it is hereby, dissolved, effective upon the receipt by the District Court of the mandate of this Court in this case.

Dated: December 22, 1955.

Per Circuit Judge WASHINGTON

Circuit Judge WILBUR K. MILLER dissents.

INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Executive agreement and statute involved	2
Statement	2
Argument	14
Conclusion	25
Appendix A	26
Appendix B	35

CITATIONS

Cases:

Brownville v. *Loague*, 129 U.S. 493	24
Bruner v. *United States*, 343 U.S. 112	25
Butte, A. & P. Ry. v. *United States*, 290 U.S. 127	15, 17
Comegys v *Vasse*, 1 Pet. 193	14
De La Rama S.S. Co. v. *United States*, 344 U.S. 386	25
Eberlein v. *United States*, 257 U.S. 82	15
General Committee v. *M.-K.-T.R. Co.*, 320 U.S. 323	15
Hahn v. *Gray*, 92 App. D.C. 188, 203 F. 2d 625	17
Hallowell v. *Commons*, 239 U.S. 506	16
Heikkila v. *Barber*, 345 U.S. 229	16
International Trading Corp. v. *Edison*, 109 F. 2d 825	24
James F. Waters, Inc. v. *Commissioner of Internal Revenue*, 160 F. 2d 596, certiorari denied, 332 U.S. 767	17
Keim v *United States*, 177 U.S. 290	16
Laycock v. *Hidalgo County Water C. & I. Dist. No. 12*, 142 F. 2d 789, certiorari denied, 323 U.S. 731	25
Lucking v. *Delano*, 74 App. D.C. 134, 122 F. 2d 21	16
Ludecke v. *Watkins*, 335 U.S. 160	15
Lynch v. *United States*, 292 U.S. 571	17
National Park Bank, Ex parte, 256 U.S. 131	24

Cases—Continued

	Page
Perkins v. *Lukens Steel Co.*, 310 U.S. 113	15
Reaves v. *Ainsworth*, 219 U.S. 296	16
Stark v. *Wickard*, 321 U.S. 288	15
Switchmen's Union v. *National Mediation Board*, 320 U.S. 297	15
United States v. *Babcock*, 250 U.S. 328	15-16
United States v. *Pink*, 315 U.S. 203	15
United States v. *Weld*, 127 U.S. 51	14
United Transport Service Employees v. *National Mediation Board*, 85 App. D.C. 352, 179 F. 2d 446	16
Williams v. *Heard*, 140 U.S. 529	14
Z. & F. Assets Corp. v. *Hull*, 311 U.S. 470	14, 23-24

Agreement and Statutes:

Yugoslav Claims Agreement of 1948	2, 3
Article 1	26
Article 1(a)	3, 23, 26
Article 1(b)	26
Article 1(c)	4, 27
Article 2	27
Article 2(A)	3, 27
Article 2(B)	27
Article 2(C)	27
Article 3	3, 28
Article 4	28
Article 4(a)	28
Article 4(b)	28
Article 4(c)	29
Article 5	30
Article 6	30
Article 7	31
Article 8	4, 18, 31
Article 9	4, 11, 32
Article 9(a)	32
Article 9(b)	32
Article 10	33
Article 10(a)	33
Article 10(b)	33
Article 11	34
Article 12	34

Agreement and Statutes—Continued

	Page
International Claims Settlement Act of 1949, 64 Stat. 12, 22 U.S.C. 1621-1627	2, 4, 35
Section 1	35
Section 2	35
Section 2(a)	35
Section 2(b)	35
Section 2(c)	35
Section 2(d)	35
Section 3	36
Section 3(a)	36
Section 3(b)	36
Section 3(c)	37
Section 4	37
Section 4(a)	5, 15, 37
Section 4(b)	5, 6, 11, 15, 38
Section 4(c)	39
Section 4(d)	39
Section 4(e)	40
Section 4(f)	40
Section 4(g)	42
Section 4(h)	6, 16, 42
Section 4(i)	42
Section 4(j)	42
Section 5	6, 43
Section 6, as amended [22 U.S.C., Supp. II, 1625]	6, 24, 43
Section 7	43
Section 7(a)	6, 43
Section 7(b)	44
Section 7(c)	44
Section 7(d)	45
Section 7(e)	6, 45
Section 7(f)	45
Section 8	46
Section 8(a)	46
Section 8(b)	46
Section 8(c)	47
Section 8(d)	48
Section 9	48
48 Stat. 9, 38 U.S.C. 705	17
1 U.S.C. 109	25

Miscellaneous:

	Page
95 Cong. Rec. 8835-37	21
95 Cong. Rec. 8837	5
95 Cong. Rec. 8838	11
95 Cong. Rec. 8838–39	3
95 Cong. Rec. 8840	19, 21
95 Cong. Rec. 8841	11, 21
95 Cong. Rec. 8844	21
95 Cong. Rec. 8845	21
95 Cong. Rec. 8847	21
95 Cong. Rec. 8853	21
95 Cong. Rec. 8853–55	19, 22
95 Cong. Rec. 8854	21, 22
96 Cong. Rec. 2966	23
96 Cong. Rec. 2966-2967	11
96 Cong. Rec. 2967	23
96 Cong. Rec. 2968	23
43 Georgetown Law Journal 582	11
Hearings on Foreign Claims Settlement Commission, H. Comm. on Foreign Affairs, 84th Cong., 1st Sess.:	
p. 98	7
p. 111, note	9
H. Rep. No. 770, 81st Cong., 1st Sess.:	
p. 2	5
p. 3	3
p. 6	18, 24
p. 7	11
p. 8	18
H. Rep. 770, Part 2, 81st Cong., 1st Sess., p. 2	18, 21
H. Rept. 1021, 83rd Cong. 1st Sess., p. 2	24
Reorganization Plan No. 1 of 1954, effective July 1, 1954 (19 F.R. 3985)	5
S. Rep. 800, 81st Cong., 1st Sess.:	
p. 1	5
p. 3	2, 5
p. 5	24
pp. 5–6	18
pp. 8–9	23
p. 10	23-24
S. Rep. 686, 83rd Cong., 1st Sess., p. 3	24

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 654

EDITH NEUMAN DE VEGVAR, PETITIONER

v.

WHITNEY GILLILLAND, PEARL CARTER PACE, AND HENRY J. CLAY, CONSTITUTING THE FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES, AND GEORGE M. HUMPHREY AS SECRETARY OF THE TREASURY OF THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

No opinion was filed in the District Court. The opinion of the Court of Appeals for the District of Columbia Circuit, not yet officially reported, is printed as an appendix to the petition for certiorari at pp. 19-24.

JURISDICTION

The judgment of the Court of Appeals was entered on December 22, 1955 (Pet. App. 25-26). The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTION PRESENTED

Whether, under the International Claims Settlement Act of 1949, the Foreign Claims Settlement Commission was finally to determine, without court review, claims to share in a fund posted by Yugoslavia pursuant to international agreement.

EXECUTIVE AGREEMENT AND STATUTE INVOLVED

The Yugoslav Claims Agreement of 1948 is set forth in Appendix A, *infra*, pp. 26-34. The International Claims Settlement Act of 1949, 64 Stat. 12, 22 U.S.C. 1621-1627, is set forth in Appendix B, *infra*, pp. 35-48.

STATEMENT

1. From time to time, prior to the Executive Agreement of 1948 which gave rise to the Fund here involved, various claims arose against Yugoslavia on behalf of American nationals, primarily out of actions by the postwar Government in Yugoslavia with regard to taking of property. S. Rep. 800, 81st Cong., 1st Sess., p. 3. Diplomatic action was taken to keep such claims for compensation alive, with the hope that settlement negotiations could be instituted on a broad basis, thus avoiding the unsatisfactory remedy offered by recourse to local tribunals. S. Rep., *supra*, p. 3. The opportunity to push such negotiations to a successful

conclusion was offered when the condition of the Yugoslav economy made negotiations with this country necessary. 95 Cong. Rec. 8838-8839.

In May 1947, the Department of State entered into negotiations with the Yugoslav Government looking to a general economic settlement of outstanding financial questions between the two Governments.[1] Two interdependent executive agreements were signed on July 19, 1948.[2] One of these, here involved, was the Yugoslav Claims Agreement of 1948 (App. A, pp. 26-34). This Agreement provided for the payment by Yugoslavia to the United States Government of $17,000,000 in full settlement and discharge of certain claims of the United States Government against Yugoslavia and of all claims "of nationals of the United States against the Government of Yugoslavia on account of the nationalization and other taking by Yugoslavia of property * * *" occurring between September 1, 1939 and the date of the Agreement (Article 1(a)). Only persons who were nationals of the United States at the time of the taking of their property by Yugoslavia were to be eligible to participate in the fund (Articles 1(a), 2(A) and 3).[3] Claims arising under the Agree-

[1] H. Rep. 770, 81st Cong., 1st Sess., p. 3.

[2] *Ibid.*

[3] Article 3 emphasized that the Agreement did not cover individuals who did not possess United States nationality at the time of the "nationalization or other taking." Such claims, whether the individuals were Yugoslav nationals or nationals of countries other than the United States, were remitted to compensation procedures prescribed by Yugoslav law.

ment were to be adjudicated by an agency to be established or designated by the United States Government and distribution of the funds was to be made "* * * in accordance with such methods of distribution as may be adopted by the Government of the United States" (Articles 1(c) and 8). Provision was made for the furnishing of information, "* * * to support or refute * * * any claim for participation * * *" in the fund, by Yugoslavia to the agency established by the United States for the adjudication of claims within the Agreement and for participation by Yugoslavia in the proceedings before the adjudicating agency (Article 9). All determinations of the adjudicating agency with respect to the validity or amounts of individual claims were to be "final and binding" (Article 8). The balance, if any, of the $17,000,000 fund remaining after such adjudication and distribution was to be returned to the Government of Yugoslavia (Article 1(c)).

In order to provide the mechanism to process claims under this Agreement and to establish the method of distribution of the fund, and additionally to set up an expert body for the processing of claims under any similar agreements which might be reached in the future with other governments, Congress passed the International Claims Settlement Act of 1949 (64 Stat. 12, 22 U.S.C. 1621-27).[4]

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[4] Throughout the legislative history, it was emphasized that the $17,000,000 fund, posted in advance by Yugoslavia pursuant to broad diplomatic representation by the United States of claims of United States nationals, was Yugoslav money,

This Act (*infra*, pp. 35-48) established the International Claims Commission within the Department of State.[5] The Commission was given "* * * jurisdiction to receive, examine, adjudicate, and render final decisions with respect to claims * * *" under the Yugoslav Claims Agreement of 1948, or any similar future agreement (Section 4(a), 22 U.S.C. 1623(a)). In reaching its decisions, the Commission was to "* * * apply the following in the following order: (1) The provisions of the applicable claims agreement as provided in this subsection; and (2) the applicable principles of international law, justice, and equity" (Section 4(a), 22 U.S.C. 1623 (a)). Decisions by the Commission were to be "* * * upon such evidence and written legal contentions as may be presented * * *, and upon the results of any independent investigation of cases which the Commission may deem it advisable to make.* * *" (Section 4(b), 22 U.S.C. 1623(b)).

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held in trust for distribution to claimants by a mechanism to be selected pursuant to the Agreement. See, *e.g.*, statement by Congressman Ribicoff, a sponsor of the legislation in the House, at 95 Cong. Rec. 8837; S. Rep. 800, 81st Cong., 1st Sess., p. 3. "* * * the bill provides the mechanism and the procedures whereby the money received by the United States can be apportioned among claimants, in pursuance of the agreement between the United States Government and the Government of Yugoslavia, July 19, 1948, in full settlement for American property nationalized or otherwise taken over by Yugoslavia." S. Rep. 800, *supra*, p. 1; H. Rep. 770, 81st Cong., 1st Sess., p. 2 ff.

[5] The functions and jurisdiction of the International Claims Commission were transferred to the Foreign Claims Settlement Commission by Reorganization Plan No. 1 of 1954, effective July 1, 1954 (19 F.R. 3985).

Provision was made for notice and hearing, and decisions of the Commission were to "* * * constitute a full and final disposition of the case in which the decision is rendered" (Section 4(b), 22 U.S.C. 1623(b)). The Act further provided that the "* * * action of the Commission in allowing or denying any claim under this Act shall be final and conclusive on all questions of law and fact and not subject to review by the Secretary of State or any other official, department, agency, or establishment of the United States or by any court by mandamus or otherwise" (Section 4(h), 22 U.S.C. 1623(h)). Section 5 (22 U.S.C. 1624) directed the Commission to certify, "* * * as soon as possible, and in the order of the making of such awards, * * *" copies of the awards to the Secretary of the Treasury and to the Secretary of State. Under Section 7(a) (22 U.S.C. 1626(a)), the Secretary of the Treasury was "* * * authorized and directed to pay * * *" the awards certified, in accordance with the procedure set forth in that section. Any person who made application for any such payment was to be held to have consented to all the provisions of the Act (Section 7(e), 22 U.S.C. 1626(e)). Section 6, as amended (22 U. S. C., Supp. II, 1625), directed the Commission to complete its affairs with respect to Yugoslav claims not later than December 31, 1954.

2. The Commission began its consideration of claims filed pursuant to the Agreement shortly after the passage of the Act and concluded its affairs with respect to Yugoslav claims on Decem-

ber 31, 1954, the termination date set by the Act as amended. During the five-year period of adjudication the Commission considered 1,554 claims totaling almost $150,000,000, denied 678 claims, and certified to the Secretary of the Treasury 876 awards aggregating almost $19,000,000, plus interest.[6] The $17,000,000 fund is therefore insufficient to satisfy in full the 646 awards exceeding $1,000 in principal amount. Accordingly, no interest is payable on awards, and the adjudication affords only partial compensation to duly certified awardholders, whose property was nationalized or otherwise taken by Yugoslavia approximately ten years ago.

3. Petitioner, not an awardholder but one of the 678 claimants as to whom awards were denied, instituted the instant action against the members of the Foreign Claims Settlement Commission and the Secretary of the Treasury in their official capacities. The complaint alleged:

In June 1951, petitioner filed her claim with the Commission, requesting compensation in the amount of $5,883,848.04 for the nationalization or other taking by the Government of Yugoslavia of property indirectly owned by petitioner through her ownership of 35,742 shares of stock of S. H. Gutmann A.G., a Yugoslav corporation. The Commission denied petitioner's claim in a Proposed Decision dated November 4, 1954, on the grounds

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[6] *Hearings on Foreign Claims Settlement Commission*, House Committee on Foreign Affairs, 84th Cong., 1st Sess., p. 98.

(1) that petitioner had not sustained the burden of proving the ownership of the shares, and (2) that the property of the corporation had been confiscated by a criminal decree of a Yugoslav court on January 19, 1946, whereas petitioner did not become a national of the United States until her naturalization on August 9, 1946, and petitioner was thus not eligible for an award under the terms of the Agreement and the Act (Paragraph Sixth of the complaint).

On petitioner's objections to the Proposed Decision, she was granted a hearing on the issues of (1) her ownership of the stock and (2) the time when the property was nationalized or otherwise taken (Paragraph Seventh). At the hearing, petitioner offered but the Commission excluded evidence attacking the Yugoslav confiscation decree as in violation of the constitution and laws of Yugoslavia and consequently null and void (Paragraph Eighth). Petitioner's evidence of ownership of the stock in question was admitted (Paragraph Ninth), as was her evidence directed at showing that, under Yugoslav law, the purported decree of confiscation, even if valid, did not have the effect of transferring title to the property to the Government of Yugoslavia, that further proceedings in a different court were necessary to effect such transfer, and that such proceedings were not completed until 1947, following petitioner's naturalization (Paragraph Tenth). Evidence was also offered and received in support of petitioner's contention that the actual transfer of title to the Government

of Yugoslavia was effected by nationalization of the property under the law regarding Nationalization of Private Economic Enterprises, in December 1946, some four months after petitioner's naturalization (Paragraph Eleventh).

On December 30, 1954, the Commission, by a two to one vote, rendered its Final Decision disallowing petitioner's claim on the finding that the property had been taken on January 19, 1946, by virtue of the affirmance on appeal of the decree of confiscation, at a time prior to petitioner's naturalization, which fact rendered the petitioner's claim "* * * not within the jurisdiction of the Commission" (Paragraph Twelfth).[7] The dissenting Commissioner was of the view that, under the applicable laws of Yugoslavia, title to the property was not in fact transferred to the Yugoslav Government until the further court proceedings were completed in November, 1947, a date subsequent to petitioner's naturalization (Paragraph Thirteenth).

Paragraph Fourteenth of the complaint alleges that, in reaching its Final Decision, the Commission "failed to apply to plaintiff's claim the provisions of the said Agreement of 1948 and the principles of international law, justice and equity as prescribed by the aforesaid Act", in that (a) "the uncontradicted evidence" established that title

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[7] 194 other claims, totaling, with that of petitioner, $40,271,718.11, were likewise rejected because the claimants were not proven to be American citizens at the time of the nationalization or other taking of the property. *Hearings, supra,* note, at p. 111.

was transferred subsequent to naturalization and the contrary finding was "wholly arbitrary and capricious and in complete disregard of the evidence"; and (b) the exclusion of the evidence attacking the validity of the confiscation decree constituted a failure to apply "the applicable provisions of international law, justice and equity as required by the Act." On the basis of the foregoing, the Final Decision was alleged to have been "rendered in excess of the authority conferred upon the Commission" by the Act and was "a patent abuse of the discretion vested in the Commission."

Admitting that the Act prohibits review by the courts of the decisions of the Commission and that therefore she had "no adequate remedy at common law or under the statutes", petitioner appealed to the "aid of the equitable processes of this Court", praying for the following relief from the District Court:

> (1) A judgment declaring the Final Decision to be arbitrary, contrary to law, and null and void;
>
> (2) A mandatory injunction requiring the members of the Commission to declare the Final Decision to be ineffective;
>
> (3) A mandatory injunction requiring the Commission to redetermine the claim "in accordance with the provisions of the Act" and upon the basis of the evidence before it "and to certify the award made in accordance with such decision to the Secretary of the Treasury";

(4) An injunction restraining the Secretary of the Treasury until final disposition of her claim from making payments from the Yugoslav Claims Fund which would reduce the amount in the Fund below $5,883,848.04. [8]

Respondents moved to dismiss the complaint on the following grounds:

(1) The decision of the Commission is final and not subject to review by the District Court;

(2) The court was without jurisdiction to issue an injunction against defendant Humphrey;

(3) The Commission was without jurisdic-

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[8] Petitioner broadened, or perhaps clarified, the nature of her demand by stating in her brief below that she desired "a full hearing by the District Court at trial of the issues" to determine her claim on the merits (Appellant's Brief, pp. 29-30). A request for the same kind of hearing is implicit in that portion of the petition for certiorari which talks generally of the right of judicial review. Pet., pp. 15-18. In fact, petitioner is forced to this admission, as to the real nature of her suit, in order to resolve a dilemma. The Commission was, as we have already set forth, authorized to determine the validity and amount of the claim not only on the basis of evidence adduced by claimants but also on the basis of its own investigation, on information furnished by its own experts who conducted investigations in Yugoslavia, and on information furnished by Yugoslavia. Section 4(b) of the International Claims Settlement Act, 22 U.S.C. 1623(b); Article 9 of the Agreement; H. Rep. 770, *supra*, p. 7; 95 Cong. Rec. 8838, 8841; 96 Cong. Rec. 2966-2967. See 43 Georgetown Law Journal 582. There is nothing to indicate that the fullest consideration has not already been given by the Commission to petitioner's claim and little purpose would be served by a general direction to the Commission to "redetermine" the claim, unless the Commission was to be limited to a consideration of petitioner's evidence and commanded to accept it as binding.

> tion to perform the acts sought to be compelled by the plaintiff.

By its order of June 13, 1955, the District Court granted the motion and dismissed the complaint on the ground that the court "* * * is without jurisdiction of the subject matter of this action."

Following the filing of the notice of appeal, petitioner filed a motion for stay to restrain the Secretary of the Treasury from making payments out of the fund which would reduce it below the amount of petitioner's claim pending the final determination of this action. By order dated July 20, 1955, the Court of Appeals granted the motion "* * * solely for the purpose of preserving the jurisdiction of this Court over this appeal * * *." The limited stay thus granted was accompanied by a schedule expediting the disposition of the case on the merits.

On December 22, 1955, the Court of Appeals affirmed the dismissal by the District Court. Possible access to judicial review based on alleged infringements of constitutional rights were put to one side as plainly not involved. After noting the origin of the Fund, the nature of the Agreement, and the provisions of the International Claims Settlement Act, the court held that the language of the Act and its legislative history plainly show that Congress intended to accord finality to the Commission's determinations of the type here under attack. In the court below, petitioner had conceded the absence of a constitutional basis for her claim

and had recognized the finality provision of the statute but sought to avoid the bar thus interposed to review by characterizing the Commission's action in rejecting her claim as "judisdictional." The court below accepted the Government's argument that this was a familiar type of attempt to avoid nonreviewability provisions and that, on analysis, the complaint did no more than charge that the Commission erred in rejecting petitioner's claim. The court said: "Errors in the result reached, or errors in the admission of evidence or in the making of a legal ruling—assuming such errors to have been made—are not grounds for judicial intervention in the face of the congressional fiat that the Commission's determinations shall be free of judicial review" (Pet. App. A, p. 23).

In normal course, a mandate is issued by the court below after 15 days. In this case, the period at the end of which the mandate would issue was specifically set at 10 days, during which period the earlier stay order remained in force. Petitioner was admonished to act within the period so set. Pet. App. A, p. 24.[9] Petitioner moved for further

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[9] The order implementing the court's decision provided (Pet. App. B, p. 26):

> IT IS FURTHER ORDERED by the Court that the injunction of this Court entered July 20, 1955, enjoining, pending this appeal, payments out of the Yugoslav Claims Fund which would reduce the total amount in such fund to a sum less than $5,883,848.04 be, and it is hereby, dissolved, effective upon the receipt by the District Court of the mandate of this Court in this case.

relief by way of a continuation of the injunction to February 1, 1956 (Supp. Record, pp. 1-10). The Government suggested that, if the court felt constrained to grant limited relief of this sort, the order should further provide that it be conditioned upon the filing of a petition within the period and also that it provide that no additional stays would be granted. The Government's suggestion was followed by the court below (Supp. Record, pp. 15-16).

ARGUMENT

The decision below is entirely adequate to the needs of this and similar cases and is clearly correct.[10] Claimants to a share in a fund such as that involved in this case have no standing beyond that which Congress chooses to accord by legislation or arrangement in implementation of the treaty or executive agreement which gives rise to the fund. *Z. & F. Assets Corp.* v. *Hull*, 311 U. S. 470, 485-486; *Williams* v. *Heard*, 140 U. S. 529, 537-538; *United States* v. *Weld*, 127 U. S. 51; *Comegys* v. *Vasse*, 1 Pet. 193. "The question * * * is simply one of the intent of Congress as disclosed by the Act." *Z. & F. Assets Corp.* v. *Hull*, 311 U. S. at 489.[11] The

[10] There is no basis for the suggestion in the petition that the court of appeals "omitted any analysis and discussion of the [Government's] contentions" (Pet., p. 11). On the contrary, the Government argued, in both courts below, that the language of the statute, its origin and its legislative history showed plainly that Congress intended to preclude judicial review. This central argument was, of course, accepted below.

[11] Petitioner's suggestion that failure to grant her a right of judicial review "* * * projects the debate into the constitutional realm of the inherent function of the courts in our

language of the statute and its legislative history leave no doubt here as to the intent of Congress.

1. Section 4(a) of the Act provides that the Commission is to have "* * * jurisdiction to receive, examine, adjudicate, and render *final* decisions * * *" with respect to claims under the Yugoslav Agreement (emphasis added). This assertion of finality is reinforced by the terms of Section 4(b), providing that "Each decision by the Commission pursuant to this Act * * * shall constitute *a full and final disposition of the case* in which the decision is rendered" (emphasis added). Congress did not, however, stop there. Although the courts had frequently held that where Congress had expressly or impliedly accorded finality to the determinations of an administrative body the legislative intent was to foreclose review of questions such as those here presented, [12] Congress chose in this

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organic system of government" (Pet., p. 17) is based on the wholly incorrect assumption that she has some sort of right independent of the Agreement and the International Claims Settlement Act. Petitioners' position under the Agreement and the statute is precisely the question for resolution, properly resolved in both courts below. As shown above, she has no other standing. See, also, cases cited in fn. 12, *infra*, pp. 15-16; and cf. *United States* v. *Pink*, 315 U.S. 203. It is, of course, well recognized, as a matter of general law, that "rights" existing by virtue of a statutory scheme carry access to judicial remedies only where Congress so contemplates. *Stark* v. *Wickard*, 321 U.S. 288, 306; *Switchmen's Union* v. *National Mediation Board*, 320 U.S. 297, 301.

[12] See, *e.g.*, *Ludecke* v. *Watkins*, 335 U.S. 160; *General Committee* v. *M.-K.-T. R. Co.*, 320 U.S. 323; *Switchmen's Union* v. *National Mediation Board*, 320 U.S. 297; *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113; *Butte, A. & P. Ry.* v. *United States*, 290 U.S. 127; *Eberlein* v. *United States*, 257 U.S. 82; *United*

Act to reemphasize these expressions of its will in even more clear and unmistakable fashion by the addition of Section 4(h):

> The action of the Commission in *allowing or denying any claim* under this Act shall be *final and conclusive on all questions of law and fact and not subject to review* by the Secretary of State or any other official, department, agency, or establishment of the United States or *by any court by mandamus or otherwise.* [Emphasis added.]

This provision means exactly what it says: that the Final Decision of the Commission fully and irrevocably disposes of "*all* questions of law and fact" involved in the claim in question, and that the claimant may not thereafter invoke the jurisdiction of the courts to review the Decision, whether such review be sought directly, indirectly through mandamus, or in any other manner.

Petitioner has continually sought, throughout this litigation, to avoid the sweeping finality provisions of the statute by allegations that the Commission's action was "jurisdictional" or was "arbitrary and capricious." We think it plain that the

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States v. *Babcock*, 250 U.S. 328; *Hallowell* v. *Commons*, 239 U.S. 506; *Reaves* v. *Ainsworth*, 219 U.S. 296; *Keim* v. *United States*, 177 U.S. 290; *United Transport Service Employees* v. *National Mediation Board*, 85 App. D.C. 352, 179 F. 2d 446; *Lucking* v. *Delano*, 74 App. D.C. 134, 122 F. 2d 21. See, *e.g.*, *Heikkila* v. *Barber*, 345 U.S. 229, for a case decided after the passage of the International Claims Settlement Act of 1949.

complaint, in its operative portions, does no more than allege mere errors of fact and law. Cf. *Butte, A. & P. Ry. Co.* v. *United States,* 290 U. S. 127; *James F. Waters, Inc.* v. *Commissioner of Internal Revenue,* 160 F. 2d 596 (C.A. 9), certiorari denied, 332 U. S. 767. However, even if the conclusory allegations are to be taken at face value in measuring the reach of the finality provisions of the Act, it should be noted that both this Court and the court below have interpreted a statute using virtually the same language as expressing the intent of Congress to deny the possibility of judicial relief even if the action of the administrative officer is arbitrary and capricious. *Lynch* v. *United States,* 292 U. S. 571, 587; *Hahn* v. *Gray,* 92 App. D. C. 188, 203 F. 2d 625, 626.[13]

2. Congress consciously chose these provisions, as plain in meaning as language can be, for the express purpose of retaining all matters arising under the Yugoslav Claims Agreement exclusively and finally within the Commission, keeping them out of litigation.

In considering the passage of legislation to implement the discretion as to the distribution of the fund already in being, recognized in this Government by the terms of the Agreement, Congress

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[13] The statute there provided:

"All decisions rendered by the Administrator of Veterans' Affairs under the provisions of [specified sections of the veterans' laws] * * * shall be final and conclusive on all questions of law and fact, and no other official or court of the United States shall have jurisdiction to review by mandamus or otherwise any such decision." [48 Stat. 9, 38 U.S.C. 705.]

rightly understood the problem to be that of setting up machinery for the orderly and equitable distribution of such an existing fund. The diplomatic negotiations with Yugoslavia, conducted by the Executive branch in the exercise of its authority in the realm of international affairs, had led to the transfer of the $17,000,000 fund from the Government of Yugoslavia to the United States Government, to be held, in effect, by this Government as trustee for claimants against the Yugoslav Government, as well as for Yugoslavia itself under the reverter clause of the Agreement. The agreement called for the fund to be distributed by an instrumentality of the United States Government in a manner to be determined by it. It was provided that determination of the distributing agency "* * * with respect to the validity or amounts of individual claims * * * shall be final and binding" (Article 8).

Nothing more was required of Congress than that it designate or establish the agency to process the claims and outline "methods of distribution" of the fund. In so doing, the question of the finality which was to be accorded to the Commission's determinations was given the fullest possible consideration.[14] Congressman Ribicoff, the chief pro-

[14] In reporting the legislation, both Houses specifically noted the finality provisions. S. Rep. 800, 81st Cong., 1st Sess., pp. 5-6; H. Rep. 770, 81st Cong., 1st Sess., pp. 6, 8. The minority views expressed in the House Report took specific exception to the finality provisions. See fn. 15, *infra*, p. 21. A major heading of the affirmative presentation of the legislation by its sponsors on the floor of the House is called

ponent of the bill in the House, summarized the purpose of the finality clauses as follows (95 Cong. Rec. 8840):

> Those provisions mean precisely what they say. The actions of the Commission insofar as they refer to the merits of claims will be final. They will not be subject to review by the courts of our judicial system.
>
> In deliberations of the committee much thought was given to the question of the relationship of judicial review to the decisions envisaged. The committee had the benefit of the advice of Members of the House who are not members of the Committee on Foreign Affairs. There was a valid difference of opinion on this matter.
>
> But the issue is cleared up once we take into consideration the point that the actions under review in this procedure are not actions of the United States Government. They are actions of the Yugoslav Government. They are being subjected to review by an executive agency of the United States. This is appropriate in that this whole procedure stems from the general power of the Executive in the field of foreign relations. That such power extends to the settlement of claims is a constitutional fact which has not been successfully challenged in the courts. The Executive has negotiated an

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"Finality of Awards." 95 Cong. Rec. 8840 ff. An amendment by Congressman Keating, offered to provide judicial review, was debated at length and defeated. 95 Cong. Rec. 8853-55.

agreement whereunder Yugoslavia has conceded redress. It remains only to apportion the benefits among the claimants. Congress is being called upon to establish the agency, since none is available within the executive establishment. The agency should be required to give due notice and hearing. The bill provides that. It extends every reasonable guaranty that the rights of the claimants shall not be ignored and that every interested party will have his day in court. But the further requirement that the courts should be empowered to intervene in the field of the Commission's discretion is not germane to this settlement. The actions under review will be inherently the actions of another government, made susceptible of review by an agency of our Government through the agreement of Yugoslavia or other governments which may make subsequent agreements. They are not actions arising out of the laws of the United States, and therefore do not come within the purview of the constitutional requirements regarding the authority of the courts.

In any event, we are confronted here by a situation, and not a theory of constitutional procedure. The problem is to get the proceeds of this settlement to the Americans who have been deprived. It would serve no interest to allow the work of this Commission to be entangled by judicial interposition. That was the sentiment of the claimants whose legal representatives appeared before the committee in

> hearings. They did not wish to see this procedure involved in the law's delays. They were mindful that final settlement in all but the minor cases must be deferred until all cases have been settled. To postpone the realization of their hopes will be in the interest of no one. It would serve only a theory—in this case a groundless one—regarding the role of the judiciary. [15]

The above quotation amply demonstrates that Congress was fully mindful of the character of this subject matter as involving the foreign relations of this Government, and of the limited participation of the courts in this area. It was also mindful that, in entering into the Agreement, the Government of Yugoslavia had voluntarily agreed to permit its liability upon these claims, up to $17,000,000, to be fixed by an agency of the United States Government, but that at the same time it had by express provision limited its submission to that agency only.

Congress, being also mindful of the practical

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[15] See, also, 95 Cong. Rec. 8835-37, 8840, 8841, 8844, 8845, 8847, 8853 and 8854. Even Congressman Vorys, the most ardent opponent of Section 4(h), conceded that Congress had the power to bar all access to the courts in this situation, and that this would be the effect of Section 4(h). In the minority report, H. Rep. 770, Part 2, 81st Cong., 1st Sess., p. 2, he said concerning the Commission's authority:

> Its action is final, and not subject to review by anyone in Government "or by any court by mandamus or otherwise." (See sec. 4b.) A claimant cannot even challenge this act, for—"any person who makes application for any such payment shall be held to have consented to all the provisions of this Act" (sec. 6e).

considerations involved in the settlement of these claims, rejected a proposal for judicial review (95 Cong. Rec. 8853-55) and deliberately wrote the finality provisions in language broad enough to prevent precisely the situation which petitioner seeks to create—to some extent has already created—in the suit at bar, as the following colloquy attests:

> Mr. VORYS: * * * Can the gentleman give this committee one single solitary reason why he wants to deny claimants the right to go to court which this amendment would give him? * * *
>
> Mr. RIBICOFF: Yes. The reason, as the gentleman may know, as we discussed it very thoroughly in committee, is that we are setting up here an expeditious handling of claims. We know that if you take these claims and get them involved in continuous court controversy, it will be many, many years before these claims are settled. You have a constitutional prohibition against courts interfering with settlements, and also *you would have all these claims interminably tied up in court where one claimant with one appeal could tie up the settlement of 1,500 claims.* We believe that three United States Commissioners would administer justice. [95 Cong. Rec. 8854; emphasis added.] [16]

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[16] Because of the finality provisions of the Act, we do not treat the merits of petitioner's claim. But, as indicated above, *supra*, p. 4, the Agreement contemplated that *validity* as well as amount would be subject to consideration by the distribu-

3. Additional obstacles to any chances of success in the instant case can be suggested. For one thing, it is doubtful whether the Secretary of the Treasury can properly be restrained from making payment on awards already certified. See *Z. & F.*

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tion mechanism set up by the United States. Only claims of those who were American citizens at the time of the "nationalization or other taking" were covered, *supra*, p. 3. Congress recognized that hardship might result from this limitation and expressed the hope that some method might, in future treaties, be devised to meet possible problems of this nature. However, it was the view of both Houses that the present state of international law and the specific nature of the Agreement limited the Yugoslav situation to claims by those who were United States citizens at the time of the taking. S. Rep. 800, *supra*, pp. 8-9; 96 Cong. Rec. 2966, 2967, 2968. Petitioner, who became an American citizen on August 9, 1946, has sought to establish the "validity" of her claim by placing the taking of which she complains at a subsequent date, talking of technical transfer of title. If transfer of title were crucial, we think that the Commission could justifiably hold that it took place at a time prior to the acquisition by petitioner of United States citizenship. However, it is plain that both the Agreement and the implementing legislation contemplated, as critical, a far more flexible determination than the ascertainment of "transfer of title." The Agreement specifically covers "nationalization and other taking" (Article 1(a)). Determination of this issue, in passing upon the validity of claims, was felt by Congress to be one of the principal problems which the Commission would face. The Senate Committee on Foreign Relations stated in its report on the legislation:

> The term "other taking" in the Yugoslav claims settlement agreement of 1948 is understood to be used in a broad generic sense. "Nationalization" is in fact a specific form of "taking" of property. "Other taking" is designed to include all other deprivation or divesting of property rights for which compensation is properly allowable under the principles of international law, justice, and equity. The Commission is not required narrowly to construe any portion of the proposed act, nor the term "other taking."
>
> It is known that some property owners were effectively

Assets Corp. v. *Hull,* 311 U. S. 470, 486, 489. In addition, it is questionable whether the Commission has the power to act at this time with regard to the Yugoslav Agreement. See International Claims Settlement Act, Section 6, as amended, 22 U.S.C., Supp. II, 1625; S. Rep. 800, *supra,* p 5; H. Rep. 770, *supra,* p. 6; H. Rep. 1021, 83rd Cong., 1st Sess., p. 2; S. Rep. 686, 83rd Cong., 1st Sess., p. 3; see *supra,* pp. 6-7. Given this broad congressional command to terminate Yugoslav affairs by a fixed date, it is doubtful whether the Commission could be compelled, by mandamus, to act. *Brownsville* v. *Loague,* 129 U. S. 493, 501; *Ex parte National Park Bank,* 256 U. S. 131; *International Trading Corp.* v. *Edison,* 109 F. 2d 825 (C.A. D.C.):

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deprived of property rights by Yugoslav authorities without formal nationalization. "Nationalization" under Yugoslav law called for compensation to be paid in accordance with Yugoslav law. Property and property rights have also been confiscated without compensation by Yugoslav authorities, placed under informal or formal sequestration, held under administration, or put in the possession or control of others. Actual transfer of title in a normal sense may not have occurred, yet holders of property may have been effectively deprived of ownership rights. Since the Yugoslav agreement covers the period of September 1, 1939, to July 19, 1948, the intent was undoubtedly to encompass all actual deprivation of property.

* * * The most difficult and important legal issues before the Commission will doubtless arise as to the phrase "other taking." It is believed that consistent with the intent of the Yugoslav agreement, the specific application of "other taking" should be left to the Commission. Prejudgment, either administrative or legislative, should be avoided in justice to all claimants. [S. Rep. 800, 81st Cong., 1st Sess., p. 10.]

Laycock v. *Hidalgo County Water C. & I. Dist., No. 12,* 142 F. 2d 789 (C.A. 5), certiorari denied, 323 U. S. 731.[17]

CONCLUSION

The central and dispositive issue is the question of the purpose and reach of the Agreement and the intent of Congress. On this issue—the only one reached below—the decision below was clearly correct. There is no conflict and it is unlikely that one will arise. We respectfully submit that the petition for a writ of certiorari should be denied.

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WARREN E. BURGER,
Assistant Attorney General,
SAMUEL D. SLADE,
B. JENKINS MIDDLETON,
Attorneys.

FEBRUARY, 1956.

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[17] The general savings statute, 1 U.S.C. 109, is inapplicable by its very terms since we are not dealing with the "expiration of a temporary statute." In any event, this case does not present the type of situation to which the savings statute was addressed. *De La Rama S.S. Co.* v. *United States,* 344 U.S. 386, 390; *Bruner* v. *United States,* 343 U.S. 112, 116-117.

APPENDIX A

Agreement Between the Governments of the United States of America and the Federal People's Republic of Yugoslavia Regarding Pecuniary Claims of the United States and Its Nationals

The Government of the United States of America and the Government of the Federal People's Republic of Yugoslavia, being desirous of effecting an expeditious and equitable settlement of claims of the United States of America and its nationals against Yugoslavia, have agreed upon the following articles:

Article 1

(a) The Government of Yugoslavia agrees to pay, and the Government of the United States agrees to accept, the sum of $17,000,000 United States currency in full settlement and discharge all pecuniary claims of the Government of the United States against the Government of Yugoslavia, other than those arising from Lend-Lease and civilian supplies furnished as military relief, arising between September 1, 1939 and the date hereof, and in full settlement and discharge of all claims of nationals of the United States against the Government of Yugoslavia on account of the nationalization and other taking by Yugoslavia of property and of rights and interests in and with respect to property, which occurred between September 1, 1939 and the date hereof.

(b) Such payment by the Government of Yugoslavia shall be made to the Secretary of State of the United States of America within forty-five days after the signing of this Agreement.

(c) If, upon adjudication made by the agency established or otherwise designated by the Government of the United States to adjudicate claims settled under this Agreement, it is found that the sum of $17,000,000 payable by the Government of Yugoslavia under the provisions of the Agreement is in excess of the total sum of the claims determined to be valid, exclusive of any interest on such claims for the period beginning on the date of the payment referred to in paragraph (a) of this Article, plus the costs of adjudication, if any, not borne by the claimants, the Government of the United States shall take the necessary steps to return such excess amount to the Government of Yugoslavia.

Article 2

The claims of nationals of the United States to which reference is made in Article 1 of this Agreement include those respecting property, and rights and interest in and with respect to property, which at the time of nationalization or other taking were:

(A) Directly owned by an individual who at such time was a national of the United States.

(B) Directly owned by a juridical person organized under the laws of the United States, or a constituent state or other political entity thereof, twenty percent or more of any class of the outstanding securities of which were at such time owned by individual nationals of the United States, directly, or indirectly through interests in one or more juridical persons of whatever nationality or otherwise; or

(C) Indirectly owned by an individual within category (A) above, or by a juridical person within category (B) above, through in-

terests, direct, or indirect in one or more juridical persons not within category (B) above, or otherwise.

Article 3

The claims of nationals of the United States to which reference is made in Article 1 of this Agreement do not include claims of individual nationals of the United States who did not possess such nationality at the time of the nationalization or other taking, which claims shall be subject to compensation by the Government of Yugoslavia, either by direct negotiations between that Government and the respective claimants or under compensation procedures prescribed by Yugoslav law.

Article 4

(a) Nothing herein contained shall constitute or be construed to constitute a waiver or release by the Government of Yugoslavia of any claims it or any Yugoslav national may have against any national of the United States.

(b) Claimants against the Government of Yugoslavia for compensation on account of the nationalization or other taking of enterprises, whose claims with respect to such nationalization or other taking are claims which are fully settled and discharged by this Agreement, receiving payment out of the funds to be paid by the Government of Yugoslavia under Article 1 of this Agreement shall be deemed to have undertaken to hold the Government of Yugoslavia, and the respective successor enterprises established by such Government, harmless against, and to have assumed, all debt obligations, including guarantees, of the enterprises of which such

claimants were formerly the owners, to nationals of countries other than Yugoslavia, valid and subsisting as of the date hereof, incurred not for the benefit of such enterprises, but for the benefit of the owners thereof; but such assumption and undertaking shall be applicable only to such proportion of such obligations as such claimants' interests in such enterprises, at the date of the nationalization or other taking thereof, bore to the total ownership interests. Debt obligations, including guarantees, owing to nationals of countries other than Yugoslavia, incurred prior to the time such claimants became nationals of the United States, shall be deemed subject to such assumption and undertaking in the absence of proof that such obligations, including guarantees, were incurred for the benefit of such enterprises.

(c) The Government of Yugoslavia recognizes the obligation of the successor enterprises created by it with respect to debts valid under Yugoslav law which were incurred prior to the nationalization or other taking, for the benefit of the enterprises nationalized or otherwise taken, provided, however, that there shall be deemed fully settled and discharged all debt obligations of enterprises, nationalized or otherwise taken, owing to nationals of the United States whose claims against the Government of Yugoslavia with respect to the nationalization or other taking of such enterprises are claims which are fully settled and discharged by this agreement; and further that all debt obligations of such enterprises to juridical persons through which the claims of such claimants are derived shall be deemed settled and discharged in the

same proportion as such claimants' interests in such enterprises, at the date of the nationalization or other taking thereof, bore to the total ownership interests therein.

Article 5

The Government of Yugoslavia agrees to accord to nationals of the United States lawfully continuing to hold, or hereafter acquiring assets in Yugoslavia, the rights and privileges of using and administering such assets and the income therefrom within the framework of the controls and regulations of the Government of Yugoslavia, on conditions not less favorable than the rights and privileges accorded to nationals of Yugoslavia, or of any other country, in accordance with the Convention of Commerce and Navigation between the United States of America and the Prince of Serbia, signed at Belgrade, October 2-14, 1881.[1]

Article 6

The Government of Yugoslavia agrees not to employ or to permit the employment of trademarks, company names and trade names formerly used in Yugoslavia by enterprises, now nationalized, which were at the time of such nationalization substantially owned, directly or indirectly, by nationals of the United States to the extent that such trademarks, company names and trade names are counterparts of trademarks, company names and trade names used elsewhere than in Yugoslavia by the former American owners of such enterprises, directly or through subsidiaries, or by their au-

[1] Treaty Series 319; 22 Stat. 963.

thority; provided, however, that nothing herein contained shall prejudice the right of the Government of Yugoslavia, or any national thereof, to employ such trademarks, company names and trade names with the consent of the former owners of such enterprises, or others authorized to permit the use thereof. The Government of Yugoslavia will take such measures as may be necessary and appropriate to prevent the use of such trademarks, company names and trade names within Yugoslavia except with such consent or in connection with products imported into Yugoslavia with respect to which the use of such trademarks, company names and trade names is permitted by or on behalf of the former owners of such enterprises, or others authorized to permit the use thereof. This Agreement does not affect in any way the rights, if any, of nationals of the United States with respect to trademarks, trade names and company names which were used in Yugoslavia by enterprises which have been taken other than by nationalization.

Article 7

Claims of nationals of the United States for war damage to property which has not been nationalized or otherwise taken prior to the date hereof shall be treated not less favorably than those of nationals of Yugoslavia, but in not event less favorably than those of the nationals of any other country.

Article 8

The funds payable to the Government of the United States under Article 1 of this Agreement

shall be distributed to the Government of the United States and among the several claimants, respectively, in accordance with such methods of distribution as may be adopted by the Government of the United States. Any determinations with respect to the validity or amounts of individual claims which may be made by the agency established or otherwise designated by the Government of the United States to adjudicate such claims shall be final and binding.

Article 9

(a) In the interests of an equitable distribution by the Government of the United States among the several claimants for participation in the amount to be paid by the Government of Yugoslavia in full settlement and discharge of claims in accordance with this Agreement, the Government of Yugoslavia will, upon the request of the Government of the United States, and to the extent possible, bearing in mind the wide-spread destruction of property and books and records in Yugoslavia caused by the war, furnish such information, including certified copies of books, records or other documents, as may be necessary or appropriate to support or refute, in whole or in part, any claim for participation in such amount, and to the same end will permit, in a manner consistent with Yugoslav law, the taking of depositions of such witnesses as may be requested by the Government of the United States.

(b) In the interest of protecting the Government of Yugoslavia from the possible assertion through third countries, or otherwise, of claims falling within the scope of this Agreement, the Govern-

ment of the United States will supply to the Government of Yugoslavia, certified copies of such formal submissions as may be made by claimants to such agency as may be established or otherwise designated by the Government of the United States to adjudicate claims to participation in the funds to be paid by the Government of Yugoslavia pursuant to this Agreement and of the corresponding awards of such agency with respect thereto. A certified copy of each such submission and award will be supplied to the Government of Yugoslavia within a reasonable time after its receipt or announcement. Subject to such rules and regulations as may be established with respect to proceedings of such agency, the Government of the United States further agrees to make available to the Government of Yugoslavia, upon its request, certified copies of transcripts of any proceedings before such agency and certified copies of documents submitted to such agency in support or in refutation, in whole or in part, of any claim submitted thereto. Subject to such rules and regulations, and with the consent of such agency, the Government of Yugoslavia may file briefs as *amicus curiae* with respect to any specific claims.

Article 10

(a) The Government of Yugoslavia shall authorize persons residing in Yugoslavia who are legally indebted to any individual, firm, or governmental agency in the United States, to meet such indebtedness on maturity.

(b) To the extent feasible, considering Yugoslav foreign exchange resources and regulations, and when necessary to effectuate the purposes of para-

graph (a) of this Article, the Government of Yugoslavia shall permit the use of dollars by, or provide dollars to those Yugoslav residents legally owing dollar obligations arising from commercial transactions involving goods or services.

Article 11

The Government of Yugoslavia agrees to give sympathetic consideration to applications for transfers to the United States of deposits in banks of Yugoslavia and other similar forms of capital owned by nationals of the United States, where the amounts involved are small but which, in view of the circumstances, are of substantial importance to the persons requesting the transfers.

Article 12

The present Agreement shall come into force and effect upon the date of signature.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Agreement.

DONE at Washington in duplicate this nineteenth day of July, 1948.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

G C Marshall
Secretary of State
of the United States of America

FOR THE GOVERNMENT OF THE FEDERAL PEOPLE'S REPUBLIC OF YUGOSLAVIA:

OBREN BLAGOJEVIC,
Deputy Minister of Finance
of the Federal People's Republic of Yugoslavia.

APPENDIX B

International Claims Settlement Act of 1949, 64 Stat. 12, 22 U.S.C. 1621 *et seq.*:

AN ACT

To provide for the settlement of certain claims of the Government of the United States on its own behalf and on behalf of American nationals against foreign governments.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "International Claims Settlement Act of 1949".

SEC. 2. For the purposes of this Act—

(a) The term "person" shall include an individual, partnership, corporation, or the Government of the United States.

(b) The term "United States" when used in a geographical sense shall include the United States, its Territories and insular possessions, and the Canal Zone.

(c) The term "nationals of the United States" includes (1) persons who are citizens of the United States, and (2) persons who, though not citizens of the United States, owe permanent allegiance to the United States. It does not include aliens.

(d) The term "Yugoslav Claims Agreement of 1948" means the agreement between the Governments of the United States of America and of the Federal People's Republic of Yugoslavia regard-

ing pecuniary claims of the United States and its nationals, signed July 19, 1948.

SEC. 3. (a) There is hereby established in the Department of State a commission to be known as the International Claims Commission of the United States (hereinafter referred to as the "Commission") and to be composed of three persons, to be appointed by the President by and with the advice and consent of the Senate. One of such members shall be designated by the President as the Chairman of the Commission and each shall receive compensation at the rate of $15,000 per annum. Two members of the Commission shall constitute a quorum for the transaction of business. Any vacancy that may occur in the membership of the Commission shall be filled in the same manner as in the case of an original appointment: *Provided,* That in the event of the death, resignation, absence, or disability of a member, the President may designate an acting member from among persons in the judicial or in the executive branch of the Government (including employees of the Commission), who possess the qualifications prescribed by this subsection, to temporarily perform without additional compensation the duties of the member until a successor is appointed or the absence or disability of the member shall cease.

(b) The principal office of the Commission shall be in the District of Columbia. The Secretary of State, in accordance with the provisions of the civil-service laws and the Classification Act of 1923, as amended, upon the recommendation of the Commission, may appoint and fix the compensation of

an executive director, and of officers, attorneys, investigators, and other employees.

(c) The Commission may prescribe such rules and regulations as may be necessary to enable it to carry out its functions, and may delegate functions to any member, officer, or employee of the Commission. The President may fix a termination date for the authority of the Commission, and the terms of office of its members under this Act. Any member of the Commission may be removed by the Secretary of State, upon notice and hearing, for neglect of duty, or malfeasance in office, but for no other cause. Not later than six months after its organization, and every six months thereafter, the Commission shall make a report, through the Secretary of State, to the Congress concerning its operations under this Act. The Commission shall, upon completion of its work, certify in duplicate to the Secretary of State and to the Secretary of the Treasury the following: (1) A list of all claims disallowed; (2) a list of all claims allowed, in whole or in part, together with the amount of each claim and the amount awarded thereon; and (3) a copy of the decision rendered in each case.

SEC. 4 (a) The Commission shall have jurisdiction to receive, examine, adjudicate, and render final decisions with respect to claims of the Government of the United States and of nationals of the United States included within the terms of the Yugoslav Claims Agreement of 1948, or included within the terms of any claims agreement hereafter concluded between the Government of the United States and a foreign government (exclusive of

governments against which the United States declared the existence of a state of war during World War II) similarly providing for the settlement and discharge of claims of the Government of the United States and of nationals of the United States against a foreign government, arising out of the nationalization or other taking of property, by the agreement of the Government of the United States to accept from that government a sum in en bloc settlement thereof. In the decision of claims under this Act, the Commission shall apply the following in the following order: (1) The provisions of the applicable claims agreement as provided in this subsection; and (2) the applicable principles of international law, justice, and equity.

(b) The Commission shall give public notice of the time when, and the limit of time within which, claims may be filed, which notice shall be published in the Federal Register. In addition, the Commission is authorized and directed to mail a similar notice to the last-known address of each person appearing in the records of the Department of State as having indicated an intention of filing a claims may be filed, which notice shall be published the Commission has jurisdiction under this Act. All decisions shall be upon such evidence and written legal contentions as may be presented within such period as may be prescribed therefor by the Commission, and upon the results of any independent investigation of cases which the Commission may deem it advisable to make. Each decision by the Commission pursuant to this Act shall be by majority vote, and shall state the reason for such decision, and shall constitute a full and final dis-

position of the case in which the decision is rendered.

(c) Any member of the Commission, or any employee of the Commission, designated in writing by the Chairman of the Commission, may administer oaths and examine witnesses. Any member of the Commission may require by subpena the attendance and testimony of witnesses, and the production of all necessary books, papers, documents, records, correspondence, and other evidence, from any place in the United States at any designated place of inquiry or of hearing. The Commission is authorized to contract for the reporting of inquiries or of hearings. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of disobedience to a subpena, the aid of any district court of the United States, as constituted by chapter 5 of title 28, United States Code (28 U.S.C. 81 and the following), and the United States court of any Territory or other place subject to the jurisdiction of the United States may be invoked in requiring the attendance and testimony of witnesses and the production of such books, papers, documents, records, correspondence, and other evidence. Any such court within the jurisdiction of which the inquiry or hearing is carried on may, in case of contumacy or refusal to obey a subpena issued to any person, issue an order requiring such person to appear or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) The Commission may order testimony to be

taken by deposition in any inquiry or hearing pending before it at any stage of such proceeding or hearing. Such depositions may be taken, under such regulations as the Commission may prescribe, before any person designated by the Commission and having power to administer oaths. Any person may be compelled to appear and depose, and to produce books, papers, documents, records, correspondence, and other evidence in the same way as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission, as hereinabove provided. If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken, provided the laws of the foreign country so permit, by a consular officer, or by an officer or employee of the Commission, or other person commissioned by the Commission, or under letters rogatory issued by the Commission. Witnesses whose depositions are taken as authorized in this subsection, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(e) In addition to the penalties provided in title 18, United States Code, section 1001, any person guilty of any act, as provided therein, with respect to any matter under this Act, shall forfeit all rights under this Act, and, if payment shall have been made or granted, the Commission shall take such action as may be necessary to recover the same.

(f) In connection with any claim decided by the Commission pursuant to this Act in which an award is made, the Commission may, upon the written request of the claimant or any attorney heretofore or hereafter employed by such claimant, determine

and apportion the just and reasonable attorney's fees for services rendered with respect to such claim, but the total amount of the fees so determined in any case shall not exceed 10 per centum of the total amount paid pursuant to the award. Written evidence that the claimant and any such attorney have agreed to the amount of the attorney's fees shall be conclusive upon the Commission: *Provided, however,* That the total amount of the fees so agreed upon does not exceed 10 per centum of the total amount paid pursuant to the award. Any fee so determined shall be entered as a part of such award, and payment thereof shall be made by the Secretary of the Treasury by deducting the amount thereof from the total amount paid pursuant to the award. Any agreement to the contrary shall be unlawful and void. The Commission is authorized and directed to mail to each claimant in proceedings before the Commission notice of the provisions of this subsection. Whoever, in the United States or elsewhere, pays or offers to pay, or promises to pay, or receives on account of services rendered or to be rendered in connection with any such claim, compensation which, when added to any amount previously paid on account of such services, will exceed the amount of fees so determined by the Commission, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $5,000 or imprisoned not more than twelve months, or both, and if any such payment shall have been made or granted, the Commission shall take such action as may be necessary to recover the same, and, in addition thereto, any such person shall forfeit all rights under this Act.

(g) The Attorney General shall assign such officers and employees of the Department of Justice as may be necessary to represent the United States as to any claims of the Government of the United States with respect to which the Commission has jurisdiction under this Act. Any and all payments required to be made by the Secretary of the Treasury under this Act pursuant to any award made by the Commission to the Government of the United States shall be covered into the Treasury to the credit of miscellaneous receipts.

(h) The Commission shall notify all claimants of the approval or denial of their claims, stating the reasons and grounds therefor, and, if approved, shall notify such claimants of the amount for which such claims are approved. Any claimant whose claim is denied, or is approved for less than the full amount of such claim, shall be entitled, under such regulations as the Commission may prescribe, to a hearing before the Commission, or its duly authorized representatives, with respect to such claim. Upon such hearing, the Commission may affirm, modify, or revise its former action with respect to such claim, including a denial or reduction in the amount theretofore allowed with respect to such claim. The action of the Commission in allowing or denying any claim under this Act shall be final and conclusive on all questions of law and fact and not subject to review by the Secretary of State or any other official, department, agency, or establishment of the United States or by any court by mandamus or otherwise.

(i) The Commission may in its discretion enter an award with respect to one or more items deemed to have been clearly established in an individual

claim while deferring consideration and action on other items of the same claim.

(j) The Commission shall comply with the provisions of the Administrative Procedure Act of 1946 except as otherwise specifically provided by this Act.

SEC. 5. The Commission shall, as soon as possible, and in the order of the making of such awards, certify to the Secretary of the Treasury and to the Secretary of State copies of the awards made in favor of the Government of the United States or of nationals of the United States under this Act. The Commission shall certify to the Secretary of State, upon his request, copies of the formal submissions of claims filed pursuant to subsection (b) of section 4 of this Act for transmission to the foreign government concerned.

SEC. 6. The Commission shall complete its affairs in connection with settlement of United States-Yugoslav claims arising under the Yugoslav Claims Agreement of 1948 not later than four years following the effective date of this Act: *Provided,* That nothing in this provision shall be construed to limit the life of the Commission, or its authority to act on future agreements which may be effected under the provisions of this legislation.

SEC. 7. (a) Subject to the limitations hereinafter provided, the Secretary of the Treasury is authorized and directed to pay, as prescribed by section 8 of this Act, an amount not exceeding the principal of each award, plus accrued interest on such awards as bear interest, certified pursuant to section 5 of this Act, in accordance with the award. Such payments, and applications for such pay-

ments, shall be made in accordance with such regulations as the Secretary of the Treasury may prescribe.

(b) There shall be deducted from the amount of each payment made pursuant to subsection (c) of section 8, as reimbursement for the expenses incurred by the United States, an amount equal to 3 per centum of such payment. All amounts so deducted shall be covered into the Treasury to the credit of miscellaneous receipts.

(c) Payments made pursuant to this Act shall be made only to the person or persons on behalf of whom the award is made, except that—

(1) if such person is deceased or is under a legal disability, payment shall be made to his legal representative: *Provided,* That if the total award is not over $500 and there is no qualified executor or administrator, payment may be made to the person or persons found by the Comptroller General of the United States to be entitled thereto, without the necessity of compliance with the requirements of law with respect to the administration of estates;

(2) in the case of a partnership or corporation, the existence of which has been terminated and on behalf of which an award is made, payment shall be made, except as provided in paragraphs (3) and (4), to the person or persons found by the Comptroller General of the United States to be entitled thereto;

(3) if a receiver or trustee for any such partnership or corporation has been duly appointed by a court of competent jurisdiction

in the United States and has not been discharged prior to the date of payment, payment shall be made to such receiver or trustee in accordance with the order of the court;

(4) if a receiver or trustee for any such partnership or corporation, duly appointed by a court of competent jurisdiction in the United States, makes an assignment of the claim, or any part thereof, with respect to which an award is made, or makes an assignment of such award, or any part thereof, payment shall be made to the assignee, as his interest may appear; and

(5) in the case of any assignment of an award, or any part thereof, which is made in writing and duly acknowledged and filed, after such award is certified to the Secretary of the Treasury, payment may, in the discretion of the Secretary of the Treasury, be made to the assignee, as his interest may appear.

(d) Whenever the Secretary of the Treasury, or the Comptroller General of the United States, as the case may be, shall find that any person is entitled to any such payment, after such payment shall have been received by such person, it shall be an absolute bar to recovery by any other person against the United States, its officers, agents, or employees with respect to such payment.

(e) Any person who makes application for any such payment shall be held to have consented to all the provisions of this Act.

(f) Nothing in this Act shall be construed as the assumption of any liability by the United States for the payment or satisfaction, in whole or in part,

of any claim on behalf of any national of the United States against any foreign government.

SEC. 8. (a) There are hereby created in the Treasury of the United States (1) a special fund to be known as the Yugoslav Claims Fund; and (2) such other special funds as may, in the discretion of the Secretary of the Treasury, be required, each to be a claims fund to be known by the name of the foreign government which has entered into a settlement agreement with the Government of the United States as described in subsection (a) of section 4 of this Act. There shall be covered into the Treasury to the credit of the proper special fund all funds hereinafter specified. All payments authorized under section 7 of this Act shall be disbursed from the proper fund, as the case may be, and all amounts covered into the Treasury to the credit of the aforesaid funds are hereby permanently appropriated for the making of the payments authorized by section 7 of this Act.

(b) The Secretary of the Treasury is authorized and directed to cover into—

(1) the Yugoslav Claims Fund the sum of $17,000,000 being the amount paid by the Government of the Federal People's Republic of Yugoslavia pursuant to the Yugoslav Claims Agreement of 1948;

(2) a special fund created for that purpose pursuant to subsection (a) of this section any amounts hereafter paid, in United States dollars, by a foreign government which has entered into a claims settlement agreement with the Government of the United States as de-

scribed in subsection (a) of section 4 of this Act.

(c) The Secretary of the Treasury is authorized and directed out of the sums covered into any of the funds pursuant to subsection (b) of this section, and after making the deduction provided for in section 7 (b) of this Act—

(1) to make payments in full of the principal of awards of $1,000 or less, certified pursuant to section 5 of this Act;

(2) to make payments of $1,000 on the principal of each award of more than $1,000 in principal amount, certified pursuant to section 5 of this Act;

(3) to make additional payments of not to exceed 25 per centum of the unpaid principal of awards in the principal amount of more than $1,000;

(4) after completing the payments prescribed by paragraphs (2) and (3) of this subsection, to make payments, from time to time in ratable proportions, on account of the unpaid principal of all awards in the principal amount of more than $1,000, according to the proportions which the unpaid principal of such awards bear to the total amount in the fund available for distribution at the time such payments are made; and

(5) after payment has been made of the principal amounts of all such awards, to make pro rata payments on account of accrued interest on such awards as bear interest.

(d) The Secretary of the Treasury, upon the concurrence of the Secretary of State, is authorized and directed, out of the sum covered into the Yugoslav Claims Fund pursuant to subsection (b) of this section, after completing the payments of such funds pursuant to subsection (c) of this section, to make payment of the balance of any sum remaining in such fund to the Government of the Federal People's Republic of Yugoslavia to the extent required under article 1 (c) of the Yugoslav Claims Agreement of 1948. The Secretary of State shall certify to the Secretary of the Treasury the total cost of adjudication, not borne by the claimants, attributable to the Yugoslav Claims Agreement of 1948. Such certification shall be final and conclusive and shall not be subject to review by any other official, or department, agency, or establishment of the United States.

SEC. 9. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated such sums as may be necessary to enable the Commission to carry out its functions under this Act.

Approved March 10, 1950.

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No. 654

IN THE

Supreme Court of the United States

October Term 1955

EDITH NEUMAN DE VEGVAR, *Petitioner*

v.

WHITNEY GILLILLAND, PEARL CARTER PACE, and HENRY J. CLAY, constituting the Foreign Claims Settlement Commission of the United States, and GEORGE M. HUMPHREY, as Secretary of the Treasury of the United States of America, *Respondents*

On Petition For A Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR AMICI CURIAE IN OPPOSITION

(Victor K. Anninger; Steven Ausnit; Corn Products Refining Company; Walter Petschek; Socony Mobil Oil Company, Inc.; Karel Charles Stiassni; and Francis Price, Jr. and Dennis G. Karzag, executors of estate of William Zimdin)

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INDEX

	PAGE
Interest of Amici Curiae	1
Argument	4
I. The decision below correctly applied the plain language of the statute expressly precluding review of the Commission's action denying petitioner's claim	4
II. The decision below is clearly consistent with the applicable decisions of this Court	10
III. No other substantial basis is presented for granting the writ prayed	13
Conclusion	16

Citations

Cases

Butte A. & P. Ry. Co. v. United States, 290 U.S. 127, 136-143	12
Charles Neuman de Vegvar v. Gillilland *et al,* Civil Action #1189-55, D. C. D. C.	3
Comegys v. Vasse, 26 U.S. (1 Pet.) 193, 212	10
District of Columbia v. Eslin, 183 U.S. 62, 65-66	13
Equitable Insurance Co. v. Brown, 213 U.S. 25, 43	8
Hadden v. Merritt, 115 U.S. 25	12
Hahn v. Gray, 203 F. 2d 625 (D. C. Cir.)	13
Lockerty v. Phillips, 319 U.S. 182, 187	13
Lynch v. United States, 292 U.S. 571, 587	13
Meade v. United States, 76 U.S. (9 Wall.) 691, 719, 725	10
Mellon v. Orinoco Iron Co., 266 U.S. 121	11
Nortz v. United States, 294 U.S. 317, 324-325	8
Perkins v. Lukens Steel Co., 310 U.S. 113	12
Skelly Oil Co. v. Phillips, 339 U.S. 667, 671-672	10
Stark v. Wickard, 321 U.S. 288, 306	13
Switchmen's Union v. National Mediation Board, 320 U.S. 297, 301	12, 13
United States v. Babcock, 250 U.S. 328	12
United States v. Binghampton Constr. Co., 347 U.S. 171	12

PAGE

United States v. Ferreira, 54 U.S. (13 How.) 40, 47 10
United States v. Williams, 278 U.S. 255 13
Williams v. Heard, 140 U.S. 529, 537-539 ..... 10, 11, 12
Work v. Rives, 267 U.S. 175, 181-182 12
Z. & F. Assets Corp. v. Hull, 311 U.S. 470, 486-489, aff'g 114 F.2d 464, 472-473 ..... 6, 10, 11, 12, 13

Constitution, Statutes and Agreements:

Administrative Procedure Act, 60 Stat. 243, 5 U.S.C. §1001 *et seq.*
Sec. 7 8
Sec. 10 10
International Claims Settlement Act, 64 Stat. 12, 67 Stat. 506, 22 U.S.C. §1621 *et seq.* 2
Sec. 4(a) 5
4(b) 5, 6
4(h) 3, 5, 6, 7, 13
7(a) 2
7(b) 2
7(c) 2, 6
7(e) 7
7(f) 12
8(a) 2, 12
8(c) 2, 6
8(d) 2
International Claims Settlement Act Amendments of 1955, 69 Stat. 562, §314, 22 U.S.C. §1641m 15
Mixed Claims Agreement with Germany, 42 Stat. 2200, 2203 11
Settlement of War Claims Act of 1928, 45 Stat. 254 11
U. S. Const. Art. III §1 13
Yugoslav Claims Agreement of 1948, 62 Stat. 2658 2
Article 1 5
3 ..... 7, 9
6 9
7 9
8 5
10 9
11 9

PAGE

Miscellaneous:

Attorney General's Manual on Administrative Procedure Act (1947) p. 76 8
95 Cong. Rec. 8838 7
8840 6
8845-8846 6
8853 ..... 6, 7
8854 ..... 6, 7
8855 7
96 Cong. Rec. 2966 7
Hackworth, Digest of International Law (1943) Vol. 5, pp. 802-804 10
H. Rep. 770, 81st Cong. 1st Sess., pp. 2-4 ..... 6, 12
Hearings on Foreign Claims Settlement Commission, H. Comm. on Foreign Affairs, 84th Cong. 1st Sess.:
p. 98 2
p. 111 9
Message of President on Reorganization Plan #1 (1954), H. Doc. 381, 83d Cong. 2d Sess., p. 2 14
Moore, History and Digest of International Arbitrations, Vol. V, pp. 4505, 4512, 4542-4544, 4650-4651 (GPO 1898) 10
Oppenheim's International Law (7th ed. by Lauterpacht, 1948), Vol. 1, pp. 314-315 10
Reorganization Plan #1 (1954), 68 Stat. 1279 5
S. Rep. 800, 81st Cong. 1st Sess.
p. 10 ..... 7, 8
p. 11 9
S. Rep. 1050, 80th Cong. 1st Sess. p. 9 15
Whiteman, Damages in International Law (1937):
Vol. 1, p. 275 12
Vol. 3, pp. 2046-2048 12

IN THE

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October Term 1955

No. 654

EDITH NEUMAN DE VEGVAR, *Petitioner*

v.

WHITNEY GILLILLAND, PEARL CARTER PACE, and HENRY J. CLAY, constituting the Foreign Claims Settlement Commission of the United States, and GEORGE M. HUMPHREY, as Secretary of the Treasury of the United States of America, *Respondents*

On Petition For A Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR AMICI CURIAE IN OPPOSITION

INTEREST OF AMICI CURIAE

Pursuant to Rule 42 of the Revised Rules of this Court, Victor K. Anninger, Steven Ausnit, Corn Products Refining Company, Walter Petschek, Socony Mobil Oil Company, Inc., Karel Charles Stiassni, and Francis Price, Jr. and Dennis G. Karzag, executors of estate of William Zimdin, by their respective attorneys, respectfully submit this brief *amici curiae* in opposition to the petition for certiorari. Written consent has been given by counsel for the petitioner and by the Solicitor General, counsel for respondents.

The *amici curiae* are holders of awards, and in some cases are also the authorized representatives of related awardholders, exceeding $7,000,000 in aggregate principal amount, which awards were made by the respondent For-

eign Claims Settlement Commission and certified to respondent Secretary of the Treasury, pursuant to the Yugoslav Claims Agreement (62 Stat. 2658) and the International Claims Settlement Act (64 Stat. 12, 67 Stat. 506, 22 U.S.C. §1621 *et seq.*).

In the five-year adjudication of Yugoslav claims under the Act, the Commission received 1554 claims totaling $149,344,249.70, denied 678 claims, and certified to the Treasury 876 awards totaling $18,817,904.89 plus interest from the date of expropriation to August 21, 1948. Under the terms of the Act, the Secretary of the Treasury is "authorized and directed" to distribute the Yugoslav Claims Fund in the Treasury to the awardholders, and "only" to the awardholders (or their successors in interest), certified by the Commission, after deducting 5% for administrative expense. §§ 7(a), 7(b), 7(c), 8(c). Any balance remaining after such distribution is to be returned to Yugoslavia. § 8(d).

The available Fund consists of the $17,000,000 paid by Yugoslavia in full settlement of the claims specified under the Agreement. § 8(d). The Fund is therefore insufficient to pay any interest awarded by the Commission, or to pay the full principal of the 646 awards exceeding $1,000, including those held by the *amici curiae*. See *Hearings on Foreign Claims Settlement Commission*, H. Comm. on Foreign Affairs, 84th Cong. 1st Sess. (1955) p. 98. Pursuant to the Act, the Treasury has paid the full principal (less 5%) of awards of $1000 or less, and was in process of distributing the remainder of the Fund *pro rata* among the other awardholders when the court below entered its restraining order on July 20, 1955 (R. 13a).[1] The present balance in the Fund is $7,485,299.92.

[1] Record pages in this brief refer to the printed joint appendix in the Court of Appeals, which is included in the record certified by the Clerk of that court pursuant to Rule 21(3).

See stipulation dated July 21, 1955 in companion case, *Charles Neuman de Vegvar* v. *Gillilland et al,* Civil Action #1189-55, D.C. D.C.

Petitioner does not question the validity of the awards so certified, but nevertheless seeks to enjoin their payment pending reconsideration of her own claim (R. 9a), which the Commission had denied after hearing (Pet. 7-8; R. 4a-6a). The Act expressly provides that "the action of the Commission in allowing or denying any claim under this Act shall be final and conclusive on all questions of law and fact and not subject to review . . . by any court by mandamus or otherwise". § 4(h).

The pendency of this single action [2] has tied up most of the present balance in the Fund and is delaying full *pro rata* distribution thereof to the holders of 646 awards including the *amici curiae.* See respondents' Opposition to motion to continue stay, dated January 4, 1956, in the certified record. The Act does not provide for payment of current interest on unpaid balances of awards. The restraining order entered by the court below did not require petitioner to post bond, and petitioner has given no security pending consideration of the petition for certiorari, to protect the awardholders against the substantial, irreparable and continuing losses caused by such delay in payments. The interruption of orderly and full *pro rata* distribution has resulted in other manifest inequities as to the proportions of awards distributed to date to various awardholders. See respondents' Opposition, *supra.*

The Agreement and Act were designed to implement American foreign policy to secure prompt, adequate and effective compensation for eligible nationals of the United

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[2] The restraining order entered by the Court of Appeals impounded $5,885,848.04, the full amount of petitioner's rejected claim (Pet. 4, 24 n.5).

States; i.e., the awardholders, whose property was expropriated by Yugoslavia approximately ten years ago. Even the prompt and full distribution of the Fund would have afforded only partial compensation for such long-standing deprivations of property rights by Yugoslavia. Petitioner's insubstantial suit is further increasing the losses suffered by delaying payments directed by law.

This action has thus caused the very inequity and confusion that Congress intended to prevent by writing into the Act its express bar against litigation of Commission decisions by disappointed claimants. As summarized in the opinion below: "Congress knew that if each claimant could take his claim to the courts the Fund could not safely be distributed until every last litigation had been terminated. Considerations of both domestic and foreign policy called for the prompt distribution of the Fund and the ending of disputes between Yugoslavia and the United States" (Pet. 22-23).

ARGUMENT

I

THE DECISION BELOW CORRECTLY APPLIED THE PLAIN LANGUAGE OF THE STATUTE EXPRESSLY PRECLUDING REVIEW OF THE COMMISSION'S ACTION DENYING PETITIONER'S CLAIM.

Petitioner concedes that this suit arises "under" the International Claims Settlement Act (R. 2a) and that the Commission's decision denying her claim "is not . . . appealable or reviewable under the statute" (R. 9a). The two courts below correctly held that the District Court had no jurisdiction over the subject matter of petitioner's suit, since the statute provides unequivocally that "the action of the Commission in . . . denying any claim under this Act shall be final and conclusive on all questions of law and fact and not subject to re-

view . . . by any court by mandamus or otherwise". § 4(h).

Under Article 1 of the Yugoslav Claims Agreement of 1948 (R. 30a), Yugoslavia paid the United States the sum of $17,000,000 "in full settlement and discharge" of various claims against Yugoslavia by the United States, and of all claims against Yugoslavia by nationals of the United States "on account of the nationalization and other taking by Yugoslavia" of property between September 1, 1939 and the date of the Agreement. Article 8 of the Agreement provided that the fund—

> "shall be distributed to the Government of the United States and among the several claimants, respectively, in accordance with such methods of distribution as may be adopted by the Government of the United States. Any determinations with respect to the *validity or amounts* of individual claims which may be made by the agency established or otherwise designated by the Government of the United States to adjudicate such claims shall be final and binding" (R. 35a) [italics added].

The International Claims Settlement Act, approved March 10, 1950, established the Commission[3] and vested it with "jurisdiction to receive, examine, adjudicate, and render final decisions with respect to claims of the Government of the United States and of nationals of the United States included within the terms of the Yugoslav Claims Agreement of 1948 . . .". § 4(a). Each decision was to be by majority vote and "constitute a full and final disposition" of the case. § 4(b). The Commission's action "in allowing or denying any claim" after hearing

[3] The International Claims Commission originally established under the Act was reconstituted as the Foreign Claims Settlement Commission, by Reorganization Plan Number 1 of 1954. H. Doc. 381, 83d Cong. 2d Sess., effective July 1, 1954. 68 Stat. 1279.

is not reviewable by the Secretary of State or any other official or by any court. § 4(h), quoted *supra*. The statutory finality is underscored by other provisions whereby the Secretary of the Treasury is "authorized and directed" to distribute the Fund "only" to the person or persons on behalf of whom awards were made and certified by the Commission, or to designated successors in interest. §§ 7(c), 8(c).

In the legislative debates, Congress confirmed the Congressional purpose simply to afford all claimants an opportunity to present their claims against Yugoslavia for final determination by the Commission. In an extended discussion on the House floor, Congressman Ribicoff, who had reported the bill from the House Committee on Foreign Affairs, stressed that the finality clause in Section 4(b) and the preclusion of judicial review in Section 4(h) "mean precisely what they say" (95 Cong. Rec. 8840), and had been designed to prevent litigation delays "where one claimant with one appeal could tie up the settlement of 1,500 claims". *Id.*, p. 8854. He also stressed that the expropriations covered by the settlement "are not actions arising out of the laws of the United States, and therefore do not come within the purview of the constitutional requirements regarding the authority of the courts". *Id.*, p. 8840. For similar reasons the Committee had concluded that the claims were outside the statutory jurisdiction and proper scope of the Court of Claims. *Id.*, pp. 8840, 8845-8846. In foreclosing review, the Committee had specifically relied upon the unanimous decision of this Court in *Z & F Assets Corp.* v. *Hull*, 311 U.S. 470 (discussed *infra*). *Id.*, pp. 8845, 8853.[4]

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[4] A minority report by Congressman Vorys acknowledged that "A claimant cannot even challenge this act, for 'any person who makes application for any such payment shall be held to have consented to all the provisions of this Act' (Sec. 6e)." H. Rep. 770 pt. 2, 81st Cong. 1st Sess. p. 2. This provision was retained in the bill as enacted. § 7(e). Congressman Ribicoff explained

Following such thorough discussion, the House rejected an amendment to strike out Section 4(h) and substitute the review provisions of the Administrative Procedure Act. *Id.*, pp. 8853-8855.

Article 3 of the Agreement expressly excludes "claims of individual nationals of the United States who did not possess such nationality at the time of the nationalization or other taking" (R. 31a-32a). Excluded claimants such as petitioner were required to settle their claims directly with Yugoslavia. *Id.* Congress was fully cognizant of this express limitation on eligibility of Yugoslav claims. 95 Cong. Rec. 8838; 96 *id.* 2966.

On the very issue of "other taking" urged by the petitioner (Pet. 15), Congress recognized that the Agreement embraced situations where "actual transfer of title in a normal sense may not have occurred, yet holders of property may have been effectively deprived of ownership rights". The "specific application of 'other taking'" in individual cases was left to final decision by the Commission, "in justice to all claimants".[5]

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that all the prospective claimants who appeared before the Committee had favored the finality provisions because "we are setting up here an expeditious handling of claims. We know that if you take these claims and get them involved in continuous court controversy, it will be many, many years before these claims are settled". 95 Cong. Rec. 8854.

[5] "It is known that some property owners were effectively deprived of property rights by Yugoslav authorities without formal nationalization. 'Nationalization' under Yugoslav law called for compensation to be paid in accordance with Yugoslav law. Property and property rights have also been confiscated without compensation by Yugoslav authorities, placed under informal or formal sequestration, held under administration, or put in the possession or control of others. Actual transfer of title in a normal sense may not have occurred, yet holders of property may have been effectively deprived of ownership rights. Since the Yugoslav agreement covers the period of September 1, 1939, to July 19, 1948, the intent was undoubtedly to encompass all actual deprivation of property.

Petitioner admittedly was not a national of the United States on January 19, 1946, the date when her property was actually "taken" by Yugoslavia as found by the Commission (R. 6a). Petitioner is really complaining of an allegedly erroneous finding by the Commission as to the meaning of "other taking". Respondents' motion to dismiss did not admit petitioner's argumentative allegations that the Commission's finding was "arbitrary" or "capricious", or petitioner's conclusions of law that the Commission here violated the Agreement or the Act in any respect (R. 7a-8a). See *Nortz* v. *United States*, 294 U.S. 317, 324-325; *Equitable Life Ins. Co.* v. *Brown*, 213 U. S. 25, 43. In any event, the Commission's decision (R. 38a) was made in the exercise of its full power and authority under the Act, and is clearly not reviewable. The Commission's ruling excluding certain evidence, to which petitioner objects (R. 4a; Pet. 8), also concerned the issue of 'other taking'. The power to decide the case necessarily included the customary authority to pass on the relevancy, materiality or competency of proffered evidence.[6]

As the Court of Appeals held: "Errors in the result reached, or errors in the admission of evidence or in the making of a legal ruling—assuming such errors to have been made—are not grounds for judicial intervention in

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"Variations of 'other taking' are many—too many and too complicated to enumerate. The problem is essentially judicial. The most difficult and important legal issues before the Commission will doubtless arise as to the phrase 'other taking.' *It is believed that consistent with the intent of the Yugoslav agreement, the specific application of 'other taking' should be left to the Commission.* Prejudgment, either administrative or legislative, should be avoided in justice to all claimants." S. Rep. 800, Committee on Foreign Relations, 81st Cong. 1st Sess., p. 10 [italics added].

[6] See Administrative Procedure Act, § 7(c), 60 Stat. 237, 5 U.S.C. § 1006(c); *Attorney General's Manual on the Administrative Procedure Act* (1947) p. 76.

the face of the congressional fiat that the Commission's determinations shall be free of judicial review" (Pet. 23).

Petitioner was accorded a hearing under the Act (R. 4a; Pet. 7-8), and concedes that the Commission "had jurisdiction to receive, examine, adjudicate and render a final decision with respect to" her claim (Pet. 7). Petitioner is really proceeding on the anomalous theory that the Commission had "jurisdiction" only to decide in her favor. Petitioner's position is not essentially different from that of numerous claimants whose claims were denied by the Commission in the exercise of its power and authority to determine the validity as well as the amount of claims. Probably half the 1554 claims filed were denied in whole or part because the claimant or the claim[7] was ineligible to share in the Fund. The Commission denied 195 claims, totaling $40,271,718, on the general ground here involved; namely, that the claimant was not a national of the United States on the date of actual "taking" by Yugoslavia. See *Hearings on Foreign Claims Settlement Commission,* H. Comm. on Foreign Affairs, 84th Cong. 1st Sess. (1955) p. 111. In so doing, the Commission was applying to varying sets of facts the provisions of Article 3 of the Agreement, which were also consistent with long-established principles of inter-

[7] "The Yugoslav claims agreement of 1948 is a settlement of a defined category of claims. In consideration of the payment of $17,000,000 the Yugoslav Government was discharged of obligation with respect to such claims. Claims not settled were not discharged and remain unsettled obligations of Yugoslavia. For example, the Yugoslav Government is not released as to nationalization or other taking after July 19, 1948. Thus also, the claims settled do not include creditor interests." S. Rep. 800, 81st Cong. 1st Sess., p. 11. Also excluded from sharing in the settlement fund were claims for certain trade-mark rights (Art. 6; R.34a), war damages (Art. 7; R.35a), exchange restrictions (Art. 10; R.36a-37a), blocked bank accounts (Art. 11; R.37a), and dollar bonds issued by predecessor Yugoslav Governments (62 Stat. 2658, 2664).

national law (R. 38a-42a). See 5 *Hackworth, Digest of International Law* (1943) pp. 802-804 (Department of State Publication #1927); 1 *Oppenheim's International Law* (7th ed. by Lauterpacht, 1948) pp. 314-315.[8]

Since Congress foreclosed review here, the petitioner cannot invoke the "equitable processes" (R. 9a) of the District Court, *Z & F Assets Corp.* v. *Hull*, 311 U.S. 470, 489, or the Declaratory Judgment Act. *Skelly Oil Co.* v. *Phillips*, 339 U.S. 667, 671-672.[9]

II

THE DECISION BELOW IS CLEARLY CONSISTENT WITH THE APPLICABLE DECISIONS OF THIS COURT

1. This Court has repeatedly sustained the finality of certifications as to the validity or amount of international claims settled by a domestic commission or officer, pursuant to Executive treaty or agreement and Congressional enactment. See *Comegys* v. *Vasse*, 26 U.S. (1 Pet.) 193, 212; *United States* v. *Ferreira*, 54 U.S. (13 How.) 40, 47; *Meade* v. *United States*, 76 U.S. (9 Wall.) 691, 719, 725; *Williams* v. *Heard*, 140 U.S. 529, 539; *cf.* 5 *Moore, History and Digest of International Arbitrations*, appendix on domestic commissions, pp. 4505, 4512, 4542-4544, 4650-

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[8] Although the merits of the Commission's decision or of petitioner's contentions are not reviewable, it is noteworthy that petitioner's argument on 'other taking' is contrary to the clear pronouncement of the Senate Committee on Foreign Relations in reporting this legislation. *Supra*, pp. 7-8 n.5.

[9] Petitioner does not invoke the Administrative Procedure Act as a separate basis of jurisdiction in the District Court. In any event, that Act is unavailing where, as here, "(1) statutes preclude review or (2) agency action is by law committed to agency discretion". § 10, 60 Stat. 237, 5 U.S.C. § 1009. The House rejected an amendment to extend the review provisions of the Administrative Procedure Act to the International Claims Settlement Act here involved. Supra, p. 7.

4651 (G.P.O. 1898). Finality was implied from the nature and background of the legislation in these instances. More recently, in *Z & F Assets Corp.* v. *Hull,* 311 U.S. 470, 489, under the Settlement of War Claims Act of 1928 (45 Stat. 254), which likewise contained no express bar to judicial review, this Court held that "for the purpose of payment under the statute the certificate of the Secretary of State must be deemed to be conclusive". The Court there affirmed, as a matter of law, dismissal of a suit by certain awardholders to enjoin the Secretary of State from certifying and the Secretary of the Treasury from paying certain awards by a mixed claims commission, which were allegedly invalid under the applicable statute (*supra*) and Executive agreement (42 Stat. 2200, 2203).[10] The instant case is even stronger, since petitioner does not challenge the validity of the many awards certified by the Commission for payment; petitioner herself is only a disappointed claimant without standing under the express provisions of the very statute relied upon; and the instant statute expressly bars judicial review of Commission decisions either allowing or denying claims.

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[10] "Congress had complete power to decide what payments should be made from that [special deposit] account and to attach such conditions as it saw fit. . . ." (311 U.S. at 486). "The question in this relation is simply one of the intent of Congress as disclosed by the Act. Congress has expressly directed payments to be made from the special account of the awards 'so certified.' The literal and natural import of this provision is that finality is to be accorded to the certificate of the Secretary of State and we perceive no ground for limiting the terms of the Act by construction. . . . . Petitioners must claim solely by virtue of their interest in the fund created by the statute and under its terms they are not entitled to complain of payments out of that fund of awards which the Secretary of State has certified" (p. 489).

This Court has carefully distinguished suits concerning the validity and amount of claims from suits to determine derivative rights in awards duly made and certified, or to compel the Secretary of the Treasury to pay awards pursuant to his ministerial duty. See *Mellon* v. *Orinoco Iron Co.*, 266 U.S. 121; *Williams* v. *Heard, supra; Comegys* v. *Vasse, supra;* and cases distinguished in *Z & F Assets Corp.* v. *Hull,* 114 F.2d 464, 472-473 (D.C. Cir.).

The espousal of claims on the diplomatic level, and the certification of awards to eligible primary claimants, are traditional acts of grace by the United States, functioning through the Executive. 1 *Whiteman, Damages in International Law* (1937) p. 275 (Department of State Publication #960); 3 *id.*, pp. 2046-2048. The Yugoslav Claims Agreement was itself part of a broad settlement of intergovernmental problems on the inter-governmental level. H. Rep. 770, 81st Cong. 1st Sess. pp. 2-4. By establishing the Fund in the Treasury (§ 8(a)), Congress assumed no liability toward any claimant (§ 7(f)), and was under no "legal or equitable obligation" to pay any claim. See *Williams* v. *Heard*, 140 U. S. at 537-538; *Z & F Assets Corp.* v. *Hull*, 114 F.2d 464, 472, aff'd 311 U.S. 470. In specifying the conditions for payment from this national fund, including finality of Commission decisions granting or denying claims, Congress expressly relied upon the *Z. & F. Assets* decision (*supra*, p. 6), which confirmed the traditional finality in settling international claims, whether by domestic or mixed commissions. *Supra*, pp. 10-11.

2. If Congress had not expressly precluded review, "the type of problem involved and the history of the statute in question become highly relevant in determining whether judicial review may be nonetheless supplied." See *Switchmen's Union* v. *National Mediation Board*, 320 U.S. 297, 301. In comparable situations, where the designated agency was empowered to determine the eligibility of claimants and claims, this Court has effectuated statutes implicitly precluding judicial review, notwithstanding allegations that the agency had misinterpreted applicable law. *Butte A. & P. Ry. Co.* v. *United States*, 290 U.S. 127, 136-143; *Work* v. *Rives*, 267 U.S. 175, 181-182; *United States* v. *Babcock*, 250 U.S. 328, 331; *cf. United States* v. *Binghamton Constr. Co.*, 347 U.S. 171, 176-177; *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113; *Hadden* v. *Merritt*, 115 U.S. 25.

Petitioner's alleged injury manifestly does not "reach the dignity of a legal right in the strict sense", since the nature and provisions of the International Claims Settlement Act show that Congress never intended to create "a statutory privilege protected by judicial remedies". See *Stark* v. *Wickard,* 321 U.S. 288, 306. The Act does not stop with the word "final", or bar review only as to "amount" of awards. Section 4(h) precludes review in explicit and comprehensive language, language which had previously been construed by this Court "to remove the possibility of judicial relief", *Lynch* v. *United States,* 292 U.S. 571, 587, even in the special circumstances suggested in the *Williams* case (278 U.S. 255), cited by petitioner (Pet. 13). See also *Hahn* v. *Gray,* 203 F.2d 625, 626 (D.C. Cir.). In establishing the conditions for payment from a national fund in the Treasury, Congress expressly negatived petitioner's argument (Pet.15-16) that the denial of her claim grounded a right of action in the courts.

The Court of Appeals correctly concluded that no issue of personal liberty or other constitutionally protected right was presented or involved (Pet.23). See *Switchmen's Union* v. *National Mediation Board,* 320 U.S. at 301; *Lockerty* v. *Phillips,* 319 U.S. 182, 187; *Z & F Assets Corp.* v. *Hull,* 311 U.S. at 486; *District of Columbia* v. *Eslin,* 183 U.S. 62, 65-66. The explicit statutory provisions foreclosing review here are sanctioned by Article III Section 1 of the Constitution; the Court of Appeals deemed it unnecessary to decide whether the courts should deny review on other grounds (Pet. 24). See 311 U.S. at 489.

III

NO OTHER SUBSTANTIAL BASIS IS PRESENTED FOR GRANTING THE WRIT PRAYED.

There is no conflict among the circuits; and the petition presents no important issue of Federal law which is not

clearly foreclosed by the statutory language or clearly decided in long-standing precedents of this Court. The opinion below is dispositive of this action and of "at least four other cases now pending in the District Court", in petitioner's view (Pet. 10). The "doubt" raised by petitioner concerning the full scope of the opinion below (Pet. 15), obviously relate to issues which are not presented by the instant case and would not be resolved by granting the petition herein.

Denial of the petition, moreover, would terminate this insubstantial litigation and enable the Treasury to resume the prompt and orderly distribution of the Fund which Congress specifically directed. *Supra,* pp. 5-7. Petitioner's single action has tied up most of the remaining balance in the Fund and is delaying full *pro rata* distribution thereof, with continuing and irreparable losses to the holders of 646 awards. *Supra,* pp. 3-4.

The Commission's consideration of claims against other countries, referred to by petitioner (Pet. 11), simply reinforces the public interest in finality of settlement and orderly distribution. In establishing the Foreign Claims Settlement Commission under Reorganization Plan Number 1, 1954, the President stressed that the Commission

> "will be able to administer any additional claims programs financed by funds derived from foreign governments without the delay which has often characterized the initiation of past programs. Moreover, the use of an existing agency will be more economical than the establishment of a new commission to administer a given type of foreign claims program". H. Doc. 381, 83d Cong. 2d Sess., p. 2.

Pursuant to Executive recommendation, Congress recently authorized the Commission, among other claims matters, to adjudicate claims by United States nationals against Roumania, Hungary, Bulgaria, Italy, and the Soviet Union. 69 Stat. 562. The claims against the

Soviet Union date from World War I, and the claims against the other countries arose under the satellite peace treaties in 1947 or shortly thereafter. The new law also bars court review (§314); and in its enactment, Congress strongly reiterated the international law principle here applied by the Commission, requiring the claimant to be a national of the United States on the date of actual deprivation or damage. S. Rep. 1050, Committee on Foreign Relations, 84th Cong. 1st Sess. p. 9.

The new legislation thus confirms the policy of the United States to accord prompt recompense to eligible nationals of the United States. Petitioner's argument on the scope of review (Pet. 15), if adopted, would inevitably defeat national policy in regard to the above claims as well as Yugoslav claims, and flood the Federal courts with litigation on a multitude of complex issues concerning the eligibility of claimants and claims against these foreign Governments, issues which Congress intended the Commission to decide with finality.

CONCLUSION

The decision below follows the clear mandate of Congress and the applicable precedents of this Court. The petition presents no substantial basis for review by writ of certiorari, and accordingly should be denied.

Respectfully submitted,

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